

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,

Plaintiff

v.

PAUL EVANKO, MARK  
CAMPBELL, THOMAS  
COURY, JOSEPH  
WESTCOTT, HAWTHORNE  
CONLEY

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No. 1:CV-01-0084  
(Judge Caldwell)

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

FILED  
HARRISBURG, PA

MAY 20 2002

MARY E. D'ANDREA, CLERK  
Per Deputy Clerk

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EXHIBITS TO DEFENDANTS' BRIEF IN SUPPORT  
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
VOLUME 6

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U.S. DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PA  
  
\* \* \* \* \*  
DARRELL G. OBER, \*  
Plaintiff \* No.  
vs. \* 1:CV-01-0084  
PAUL EVANKO, MARK \*  
CAMPBELL, THOMAS \*  
COURY, JOSEPH \*  
WESTCOTT, \*  
HAWTHORNE CONLEY, \*  
JOANNA REYNOLDS \*  
and SYNDI GUIDO, \*  
Defendants \*

\* \* \* \* \*

VIDEOTAPE DEPOSITION OF  
JOSEPH WESTCOTT  
JANUARY 7, 2002

ORIGINAL

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by the certifying agency

1 VIDEOTAPE DEPOSITION

2 OF

3  
4 JOSEPH WESTCOTT was taken on behalf  
5 of the Plaintiff herein, pursuant to  
6 the Rules of Civil Procedure, taken  
7 before me, the undersigned, Denise  
8 J. Khorey-Harriman, a Registered  
9 Merit Reporter and Notary Public in  
10 and for the Commonwealth of  
11 Pennsylvania, at the law offices of  
12 Don Bailey, Esquire, 4311 North  
13 Sixth Street, Harrisburg,  
14 Pennsylvania, on Monday, January 7,  
15 2002, at 1:35 p.m.

A P P E A R A N C E S

DON BAILEY, ESQUIRE

4311 North Sixth Street

Harrisburg, PA 17101

COUNSEL FOR PLAINTIFF

JOANNA N. REYNOLDS, ESQUIRE

BARBARA L. CHRISTIE, ESQUIRE

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1800 Elmerton Avenue

Harrisburg, PA 17110

COUNSEL FOR DEFENDANTS

I N D E X

WITNESS: JOSEPH WESTCOTT

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By Attorney Reynolds 190 - 191

CERTIFICATE 194

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EXHIBIT PAGE

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NUMBER

IDENTIFICATION

IDENTIFIED

NONE.

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P R O C E E D I N G S

THE VIDEOGRAPHER:

Good afternoon ladies and gentlemen. Please be advised the video and audio is in operation. My name is Crystal M. Lyde, L-Y-D-E. My address is 4310 Hillsdale Road, Harrisburg, Pennsylvania, 17712. I've been contacted by PR Video to be the operator for this deposition.

The case is: In the United States District Court for the Middle District of Pennsylvania. The caption is Darrell Ober versus Paul Evanko, et al. The Docket Number is 1:CV-01-0084.

The date is January 7th, 2002. The time is

1 1:35 p.m. The video  
2 deposition is being taken  
3 on behalf of Plaintiff,  
4 Darrell Ober, and is also  
5 being done  
6 stenographically. The  
7 witness' name is Joseph  
8 Westcott.

9 Would you raise your  
10 right hand for me, please,  
11 sir? Please state your  
12 name for the record and  
13 spell it, please?

14 A. Joseph H. Westcott,  
15 W-E-S-T-C-O-T-T.

16 THE VIDEOGRAPHER:

17 Do you so swear to  
18 tell the whole truth,  
19 nothing but the truth so  
20 help you God?

21 A. I do.

22 THE VIDEOGRAPHER:

23 Could we get a sound  
24 check around the room,  
25 Mr. Bailey.

1                   ATTORNEY BAILEY:

2                   Yes. My name is Don  
3                   Bailey. I represent the  
4                   Plaintiff in this matter,  
5                   Darrell G. Ober.

6                   ATTORNEY REYNOLDS:

7                   Joanna Reynolds. I  
8                   represent the Defendants  
9                   in this matter.

10                  ATTORNEY CHRISTIE:

11                  Barbara Christie,  
12                  Counsel --- Pennsylvania  
13                  State Police, co-counsel  
14                  in this matter.

15                  ATTORNEY BAILEY:

16                  Okay. I know you  
17                  were here earlier. Thank  
18                  you very much. There is a  
19                  stenographer here. The  
20                  stenographer is here on  
21                  behalf of the Defendants,  
22                  so there will be a  
23                  stenographic recording  
24                  also. Do you want the  
25                  video or the video

10

1 transcript, either one of  
2 you.

3 ATTORNEY REYNOLDS:

4 I think we still ---.

5 ATTORNEY BAILEY:

6 Well, let us know  
7 later on.

8 ATTORNEY REYNOLDS:

9 All right.

10 EXAMINATION

11 BY ATTORNEY BAILEY:

12 Q. Colonel, before I begin,  
13 just a few instructions. I know you  
14 were here this morning but may or  
15 may not be familiar with this  
16 process. This deposition is taken  
17 by video and audio means. You do  
18 have a right to come here and view  
19 --- to acquire a copy, you have to  
20 pay for it. But you do have a right  
21 to come here in my office. I will  
22 make available a copy of your video  
23 deposition. You can sit down and  
24 view it. You have a right to that.

25 Otherwise, work with your

11

1 attorneys, whatever arrangements  
2 they make on acquiring stuff, that's  
3 fine.

4 Now, today, I'm going to  
5 be asking you some questions and  
6 during the process of responding to  
7 questions, it's important that you  
8 keep your voice up. It's also  
9 important that you remember that,  
10 particularly because we have a  
11 stenographer, that you have to ---  
12 don't talk over my answers. And if  
13 you find that I'm interrupting you,  
14 you make sure you stop me. Okay?

15 A. I will do that.

16 Q. All right. And so you get  
17 a chance to answer fully and  
18 completely. I want to reemphasize  
19 something that I indicated to  
20 Mr. Wertz this morning, to Major  
21 Wertz this morning. And that is, if  
22 you have any questions of me during  
23 the deposition, I don't want you to  
24 be bashful about asking me to  
25 explain the question or ask me about

12

1 where I'm going. Attorneys, I don't  
2 know any other attorney that does  
3 that, but I wish all of us did. I  
4 don't want any confusion in your  
5 mind about a question or the purpose  
6 of a question and that includes a  
7 couple times, for example, this  
8 morning Mr. Wertz took issue with  
9 what I was doing with questions or  
10 where I was going. I think it makes  
11 for a better record if you feel free  
12 as a witness to raise objections or  
13 ask me to explain. Don't be shy  
14 about doing that. Okay?

15 The idea here is to get  
16 what you know as fully and  
17 completely as possible. Now, you  
18 heard the rest of the instructions  
19 this morning. There's no reason to  
20 drag this out. Do you have any  
21 questions of me before we begin?

22 A. No.

23 Q. Okay. I ---.

24 ATTORNEY REYNOLDS:

25 Mr. Bailey.

13

1 ATTORNEY BAILEY:

2 One last ---.

3 ATTORNEY REYNOLDS:

4 I assume we're going  
5 to reserve all objections  
6 except as to form.

7 ATTORNEY BAILEY:

8 Yeah.

9 ATTORNEY REYNOLDS:

10 And again, I would  
11 like this witness to  
12 review his deposition  
13 transcript and sign off on  
14 it, sign the errata sheet  
15 of corrections.

16 BY ATTORNEY BAILEY:

17 Q. Yeah. Counsel has asked  
18 --- normally when you --- if I had  
19 ordered a --- let me explain this  
20 because you may not understand what  
21 it is. If I had asked for a ---  
22 brought a stenographer in here like  
23 this young lady here, what the Rules  
24 provide in that case is within 30  
25 days you have a right to be notified

1 of the opportunity to review the  
2 deposition. And there's a sheet, it  
3 doesn't allow you to change anything  
4 but by page and line you can write  
5 down on there an objection, an  
6 observation, a disagreement, a  
7 correction, a redaction, whatever.  
8 You know, with a video deposition,  
9 the deposition is the deposition.  
10 It is there. There's no provision  
11 for that.

12 But your counsel has  
13 asked, and I think it's a good idea  
14 and I do not object, we'll be making  
15 a transcript of the video  
16 deposition. You'll not be permitted  
17 to take it out or to have that  
18 unless it is purchased from the  
19 video company, because it's not my  
20 property. I have to buy mine, too.  
21 But what will happen is you can come  
22 here once I get my copy. You'll  
23 have your own stenographic copy, but  
24 you'll be allowed to come and Joanne  
25 had asked you be allowed to do an

15

1 errata sheet, that's fine. I'll  
2 permit that.

3 Normally you wouldn't do  
4 that with a video, but I have no  
5 objection so ---.

6 A. Okay:

7 Q. Now, the other thing I  
8 notice, sir, is you're a little bit  
9 soft spoken. That microphone, that  
10 one that's not being --- the other  
11 one, that's it. Pull that just a  
12 little bit wee closer. Maybe you  
13 don't have to be that close but give  
14 me your name again.

15 A. Joseph H. Westcott.

16 Q. You can back it up about a  
17 foot and a half. That's fine, sir.  
18 You're good. Colonel, is that okay  
19 to call you Colonel?

20 A. That's fine.

21 Q. Okay. Colonel Westcott,  
22 my understanding is you're retired?

23 A. That's correct.

24 Q. When did you retire?

25 A. July 7th, 2000. A year

16

1 and a half ago, whatever year that  
2 was.

3 Q. Okay. Now, prior to your  
4 --- prior to your retirement, how  
5 were you employed?

6 A. I was employed as the  
7 Deputy Commissioner for operations  
8 Pennsylvania State Police.

9 Q. Can you give us a brief  
10 summary of what your duties and  
11 obligations were in that capacity?

12 A. Sure, I was responsible  
13 for pretty much all of the  
14 operations of the department that  
15 include the troop commands, area  
16 commands, various bureaus, bureau  
17 --- parole bureaus, criminal  
18 investigations, drug law, liquor  
19 control, emergency, special  
20 operations.

21 Q. In that capacity, do you  
22 assign investigations?

23 A. Oh, yes, sir.

24 Q. And in what way? How  
25 would you assign an investigation,

17

1 tell us what that means in  
2 Pennsylvania State Police?

3 A. And I would not  
4 necessarily assign investigations on  
5 a daily basis. Don't  
6 misunderstand. The troop commands  
7 and area commands pretty much  
8 respond to incidents that are  
9 brought to their attention and they  
10 then, of course, would advise me of  
11 what was going on. But there is,  
12 you know, some times when it may be  
13 necessary for me to ask an area  
14 commander, and I always dealt with  
15 area commanders. If I were to deal  
16 with any --- I was a stickler on  
17 chain of command. If there was ever  
18 an opportunity that I had to discuss  
19 something with a troop commander, I  
20 most certainly first opportunity I  
21 would have, I would discuss it. I  
22 would advise the area commander  
23 that, you know, I was unable to get  
24 a hold of him for one reason or  
25 another then I'd talk to the troop

18

1 commander about it. So there were  
2 times when I'd talk to someone other  
3 than an area commander but most  
4 always an area commander. I would  
5 ask him if he would look into this  
6 matter or that matter. I had a  
7 report of something, somebody told  
8 me something and could somebody look  
9 into it.

10 Q. Well ---?

11 A. So it's not a formal, it's  
12 not a formal.

13 Q. No.

14 A. It's just sort of a  
15 request, listen, my neighbor said he  
16 had a problem with this or that.  
17 Can you send a patrol over to look  
18 at it and that sort of thing.

19 Q. Well, and in that kind of  
20 case, it's like any organization has  
21 to run, particularly a law  
22 enforcement investigation ---  
23 organization. I'm not talking about  
24 more or less checking into things.  
25 I assume on the day-to-day

19

1 operations of running any outfit as  
2 large as the Pennsylvania State  
3 Police that you've got to follow up  
4 on a lot of loose ends and dangling  
5 participles as part of doing your  
6 job. I'm talking more about the ---  
7 I'm speaking more about the official  
8 type of thing on, you know, formally  
9 launching or initiating an  
10 investigatory process. Was that one  
11 of your jobs?

12 A. It could be. It was not  
13 very often.

14 Q. Well, in what way could it  
15 be? You know, how would you go  
16 about doing that? Maybe I can do  
17 this best by example. I have a  
18 limited experience with a military  
19 organizations with the United States  
20 Army. In the United States Army if  
21 somebody did something wrong out  
22 there, even if it was witnessed by,  
23 let's say, a brigade commander or a  
24 full colonel, he couldn't initiate  
25 or make any kind of disciplinary

1 thing. He had to go to the  
2 commander, the commander would  
3 investigate that, reach a decision  
4 on discipline with the exception of  
5 a battalion commander who had a  
6 limited so-called Article 15  
7 authority.

8 Now, I'm talking about the  
9 formal sense of getting an  
10 investigation started where you hear  
11 about something out there. How do  
12 you do that? Do you do a written  
13 report? I mean, can you call up BPR  
14 or call up some area commander and  
15 say, I want Joe Blow investigated?  
16 How does that work?

17 A. No, I wouldn't do  
18 something like that, of course.

19 Q. Okay.

20 A. And let's separate out  
21 what you're asking here.

22 Q. Okay.

23 A. Let me give you a couple  
24 of examples, okay, as a matter of  
25 clarification. The prison --- the

21

1 prison break in Pittsburgh some  
2 years ago, four or five years ago.

3 Q. I remember well.

4 A. There were five or six  
5 guys.

6 Q. I remember the  
7 investigation. I can tell you how  
8 it happened?

9 A. Started a fire.

10 Q. Started a fire?

11 A. To find some other place  
12 to live.

13 Q. Right.

14 A. The troop area command  
15 began their investigation as they  
16 would normally do based upon receipt  
17 of information from corrections.  
18 When I was advised of that right  
19 away, because that's what's  
20 required, I then assigned, I asked  
21 our director of bureau of criminal  
22 investigation and asked him to  
23 assign people from our fugitive  
24 apprehension squad to go out there  
25 and assist the troop. So in that

22

1    regard, I would make an assignment,  
2    yes, send your people out there to  
3    help out the troop. That's for an  
4    investigative thing like that. If  
5    it's a personnel complaint, no, I  
6    did not assign anybody to do  
7    personnel complaints. Okay? If I  
8    received information about a  
9    personnel matter, then I either  
10   referred the complainant, whoever  
11   was telling me, to BPR to make the  
12   complaint, or if I received  
13   information, for example, from a  
14   troop commander, area commander,  
15   something like that, I would direct  
16   them to BPR with that.

17   Q.           I understand.

18   A.           So I would not pick up the  
19   phone and call BPR and say, listen,  
20   go do this or go do that. No.

21   Q.           Why wouldn't you do that?

22   A.           It just doesn't ---.

23   Q.           Because in response to my  
24   question you started off saying, I  
25   wouldn't do anything like that. And

23

1 I took note of that mentally. You  
2 know, why wouldn't you do anything  
3 like that?

4 A. Well, first off, it's not  
5 appropriate for me or anybody else  
6 to pick up the phone and ask BPR to  
7 go do something. There's written  
8 procedure that you follow. There's  
9 written forms requesting that that  
10 investigation be conducted.

11 Q. Okay.

12 A. BPR don't fall under my  
13 area of responsibility anyway. So,  
14 you know, generally what I would do  
15 is go see Colonel Coury and, say,  
16 listen, here's the information I  
17 just received. I advised these  
18 people to go contact BPR.

19 Q. Okay.

20 A. Sure.

21 Q. All right, sir. Thank you  
22 very much.

23 A. Sure.

24 Q. Now, in going back, are  
25 you familiar with --- at least

1 generally familiar, do you remember  
2 reading or talking with the Amended  
3 Complaint in this case? I mean,  
4 you're a Defendant here. I'm going  
5 to assume you did, but sometimes  
6 people don't. Have you read over  
7 the Complaint?

8 A. I have.

9 Q. I'm going to ask --- most  
10 of the questions I ask today are  
11 going to be taken basically just  
12 from that Complaint. I have a copy  
13 of it here for you to put in front  
14 of you if your attorneys don't have  
15 it for you to refer to. Okay? Now,  
16 before I do that, just a few more,  
17 just a few more general questions.  
18 You made a comment in response to an  
19 earlier question of mine that you  
20 were, quote/unquote, correct me if  
21 I'm in error, a stickler on chain of  
22 command.

23 A. I am.

24 Q. All right, sir. Can you  
25 --- most of the colonels I'm

25

1 familiar with pretty much were, too,  
2 I'll tell you. Can you tell me what  
3 that means to you? You're a  
4 Defendant in this matter. Tell us  
5 what stickler on chain of command  
6 means to you.

7 A. That means that I expected  
8 the people who worked under my area  
9 of command to follow the chain of  
10 command up through and advise me  
11 accordingly. That also means that I  
12 would follow that chain of command  
13 back down the chain of command as  
14 well. I did not talk --- now, there  
15 are exceptions, and I'll explain  
16 those to you. But I did not talk to  
17 a trooper out on the road, because  
18 that's not appropriate for a  
19 Lieutenant Colonel to do that.

20 Q. Right.

21 A. Now, the exceptions are  
22 this. I have a lot of friends in  
23 the Pennsylvania State Police of all  
24 ranks. And I --- that doesn't mean  
25 I don't talk to them ever. I

1 certainly talk to them.

2 Q. All right.

3 A. If any business discussion  
4 is held between me and them, then I  
5 certainly tell their commanders that  
6 we had that conversation and I  
7 direct them to be sure that they  
8 also do the same thing. That's what  
9 I mean about being a stickler for  
10 the chain of command.

11 Q. When I --- when I was in  
12 the Army, if you were a ground  
13 commander, maybe just a Second  
14 Lieutenant platoon leader, if you  
15 were engaged in ground combat, I  
16 don't know if it was ever written  
17 down anywhere, but as a leader  
18 engaged in ground combat, if you're  
19 actually in a fire fight or  
20 something, you --- you controlled  
21 that situation. General, a chairman  
22 of the joint chiefs of staff could  
23 not come down and interfere with  
24 your command if you're involved in  
25 that fight. That meant supporting

27

1 fires and everything else. Okay?  
2 Does the State police have anything  
3 like that? Can you as a top  
4 official in the Pennsylvania State  
5 Police become involved in the  
6 administration of a unit or in  
7 giving orders to people? Let's say  
8 if you show up at a --- there's an  
9 incident out on the Pennsylvania  
10 Turnpike and people are involved in  
11 a serious situation, can you take  
12 over or replace somebody?

13 A. I suppose I could. I not  
14 necessarily would but certainly  
15 could.

16 Q. Okay. It's not quite the  
17 same situation, I guess, but if  
18 you're a trooper, now let's reverse  
19 the roles. Okay? Now, you're not  
20 the commanders in conflict, okay?  
21 Let's say you're a trooper and  
22 you're being given orders to do  
23 something by your immediate  
24 supervisor who maybe is a sergeant  
25 and the Colonel calls up and tells

28

1 him to do something else, what are  
2 they supposed to do? Should they  
3 follow the sergeant's orders or  
4 should they follow the colonel?

5 A. First place that would not  
6 happen.

7 Q. Okay.

8 A. If I was there, that would  
9 not happen.

10 Q. Okay, sir.

11 A. First, I would not ---  
12 unless ---.

13 Q. Right.

14 A. I was understood by that  
15 commander on scene commander there  
16 that I was now in charge.

17 Q. All right.

18 A. Then that would not  
19 happen. I would not tell somebody  
20 in that chain of command to go do  
21 something.

22 Q. Is it fair to say that the  
23 higher you go in an organization the  
24 more authority you have, obviously  
25 your orders, provided they're lawful

1 orders, recognizably lawful orders  
2 they're going to take precedent and  
3 the person at top is going to be  
4 charge? That's the way the system  
5 runs. Is that fair to say?

6 A. Yes, but you have to be  
7 very careful.

8 Q. Sure.

9 A. And I did my best to be  
10 very careful what I said and what  
11 came out of my mouth under whatever  
12 circumstances did not counteract  
13 what this guy's immediate supervisor  
14 might have said to him or whatever.  
15 Okay? You have to be very, very  
16 careful about that.

17 Q. You recognized, in other  
18 words, that the integrity and the  
19 effectiveness of your outfit  
20 depended upon the fact that your  
21 subordinates through the chain of  
22 command, it was important that they  
23 have respect and that respect be  
24 given to their levels of command,  
25 because the whole --- because you

30

1 can't micromanage the whole  
2 organization; right?

3 A. I don't know if I said  
4 that, but that would be accurate.

5 Q. Isn't that correct?  
6 That's really what you're telling us  
7 is that that's good --- that would  
8 be good police or military or  
9 paramilitary practice?

10 A. Yes, that's correct.

11 Q. In a minute when I get  
12 back to it, I'm going to ask you  
13 questions related to what we just  
14 talked about, based upon the  
15 testimony that you witnessed this  
16 morning from Major Wertz and about  
17 the situation that Captain Ober was  
18 in. Okay? So I want you to file  
19 that back away in your mind, because  
20 we're going to revisit it in just a  
21 couple minutes. Now, at some point,  
22 you learned about this FBI probe  
23 that is one of the underlying  
24 material issues in the Ober  
25 Complaint. Is that correct?

1 A. Yes, I did.

2 Q. How and under what  
3 circumstances did you learn of the  
4 FBI probation?

5 A. Colonel Coury called me up  
6 and told me about it.

7 Q. And ---?

8 A. In fact, he told me the  
9 conversation that the Colonel Fikus  
10 (phonetic) and Captain Ober had with  
11 the Commissioner.

12 Q. And what did --- what did  
13 Colonel Coury tell you?

14 A. Well, just it was just  
15 general terms that he --- that I can  
16 recall and that was that generally  
17 the FBI had been conducting an  
18 investigation, that Captain Ober and  
19 Captain --- and Colonel Fikus had  
20 had knowledge of that and had  
21 neglected to tell anybody other than  
22 that.

23 Q. Did he say neglected to  
24 tell anybody?

25 A. I'm not sure. That's my

1 --- you know, that's my  
2 understanding. That's my verbiage  
3 there.

4 Q. Okay.

5 A. Had not told anybody.

6 Q. Okay. They had failed to  
7 or ---?

8 A. They had not --- they had  
9 not told anybody.

10 Q. Was there any indication  
11 that they had made an error in not  
12 telling anybody?

13 A. Oh, I don't know if there  
14 was any innuendo that way at all.  
15 He had apparently come by that  
16 knowledge and --- and called me up  
17 and told me about it.

18 Q. But why not call you up,  
19 if you know, why not call you up and  
20 simply say, hey, I got great news.  
21 Gee, the FBI was looking into a  
22 problem out there and they cleared  
23 us and we're okay. Did he say  
24 anything like that?

25 A. No, he didn't say anything

1 like that.

2 Q. Was he upset because  
3 somebody didn't tell somebody?

4 A. I'm not --- I can't tell  
5 you whether was he upset or not. I  
6 was on the other end of the phone  
7 line.

8 Q. Who ---?

9 A. And he's the one that told  
10 me that Captain Ober and Colonel  
11 Fikus had just told the Commissioner  
12 that an investigation had been ---  
13 an ongoing investigation had been  
14 going on, and in --- and they hadn't  
15 told him about it before but are  
16 telling him about it now.

17 Q. Okay. Let's talk about  
18 this a little bit. I want to  
19 underline a word back there,  
20 sticking out in my mind, the word  
21 just. J-U-S-T. Just told the  
22 Commissioner. Do you remember  
23 saying that?

24 A. Yes, but that was my word,  
25 yes.

1 Q. Why did you --- was that  
2 the situation?

3 A. Because that was my  
4 understanding that he had just been  
5 told that on that particular day.

6 Q. Was that a hot item?

7 A. It was a conversation I  
8 had. You know, we were all out at  
9 the Academy earlier. I left to go  
10 back to the office and apparently  
11 that conversation had occurred.

12 Q. Well, what else did he  
13 tell you in that conversation?

14 A. That generally is about  
15 it. I don't remember anything  
16 else.

17 Q. Well, did he indicate how  
18 the Commissioner felt about that  
19 issue, about this matter?

20 A. No, he did not, that I can  
21 recall.

22 Q. So he called you up to  
23 tell you that these guys had just  
24 told --- had just told the  
25 Commissioner about it. Those were

1 your words; right?

2 A. That's my understanding.

3 Q. Well, how did that strike  
4 you?

5 A. How do you mean?

6 Q. How did it, you know, what  
7 did you deduce from what he told  
8 you? What did you think about what  
9 he said? Did it affect you in any  
10 way? Did it raise a red flag?  
11 You'd indicated earlier, stickler  
12 for the chain of command. Did you  
13 read anything into it? You know,  
14 how did it affect you?

15 A. Well, Colonel Fikus or  
16 Captain Ober were in my chain of  
17 command so there was no chain of  
18 command issue there so far as I was  
19 concerned.

20 Q. Well, every --- your  
21 operations, you're like a battalion  
22 level executive officer.  
23 Everything's in your chain of  
24 command, isn't it?

25 A. Well, no, not

36

1 necessarily. Certainly from a rank  
2 perspective everybody of a lesser  
3 rank, certainly that sort of thing.  
4 But you are in charge of your area  
5 of responsibility. There were three  
6 Deputy Commissioners there. Each  
7 had their own areas of  
8 responsibility. Those people that  
9 worked in those areas reported up  
10 through their chains of command to  
11 them. There's in other --- not  
12 necessarily a need or requirement to  
13 go outside that.

14 Q. Well, then ---?

15 A. Area of responsibility.

16 Q. Did you assign --- I'm  
17 sorry. Were you done?

18 A. Uh-huh (yes).

19 Q. Then why did you assign  
20 Williams and Wertz to do the  
21 investigation in this Ober matter,  
22 the inquiry?

23 A. Well, because ---.

24 Q. Did somebody ask you or  
25 ---?

37

1 A. Well, yes. The next day,  
2 we had discussion about what had  
3 been told to the Commissioner and  
4 what had we --- what little we knew  
5 at that point. It was decided that  
6 we needed to know more information,  
7 the Commissioner needed to know more  
8 information so that we should make  
9 an inquiry into it, find out what  
10 happened.

11 Q. Well, let's stop at that  
12 point now. Why not just call our  
13 brothers in the FBI and find out  
14 what went on?

15 A. Well, if it was just going  
16 to be a one --- one type of a  
17 conversation maybe you would. But  
18 you need to do an inquiry to find  
19 out what was involved here. Already  
20 we knew there was some people in the  
21 FBI, we didn't know who there was,  
22 Captain Ober and there was Colonel  
23 Fikus. What were the  
24 circumstances?

25 Q. Well, don't you trust the

1 FBI?

2 A. I don't think it's a  
3 matter of trust at all.

4 Q. But the question ---?

5 A. I think somebody needs to  
6 go out there and talk to them.

7 Q. Okay. But the question  
8 is, do you trust the FBI?

9 A. Sure. Why wouldn't I?

10 Q. Well --- pardon?

11 A. Why wouldn't I?

12 Q. You wouldn't want me to  
13 answer that, because we don't have  
14 enough time. But let me --- no, in  
15 seriousness, in seriousness, I would  
16 assume that you would have faith,  
17 confidence and respect, generally at  
18 least, I'm not saying everybody in  
19 the organization.

20 A. Unless there's reasons not  
21 ---.

22 Q. The FBI is like anybody  
23 else, but generally speaking it's  
24 fair to say without being facetious  
25 or pejorative about it in any way,

39

1 it's fair to say that you respect  
2 and you work with and you have some  
3 respect for the FBI as a law  
4 enforcement agency and obviously  
5 they're quite good at what they do;  
6 correct?

7 A. In some things. I have a  
8 lot of friends in the FBI that I  
9 have respect for. There are others  
10 that I don't care for.

11 Q. I share your point of view  
12 from what I know from my  
13 perspective, but the point is ---  
14 I'm asking the point is, why  
15 couldn't somebody call the FBI and  
16 check with them and ask them, you  
17 know, what's the story here?

18 A. Well, I don't --- I don't  
19 think you would get a full and  
20 complete inquiry if you did that.  
21 There are also, understand, the ---  
22 you know, there are other people  
23 that have time to do those things,  
24 whereas I would not necessarily have  
25 time to do an inquiry plus

40

1 everything else I would do every  
2 day.

3 Q. Yeah.

4 A. It depends on where --- I  
5 have no idea where an inquiry may  
6 take you, may lead you.

7 Q. Well, you weren't  
8 concerned about what the FBI found  
9 out, were you, or were you?

10 A. All I was concerned about  
11 at that point was to get an inquiry  
12 to find out what the circumstances  
13 were. Okay? What were the  
14 circumstances.

15 Q. That's why I'm asking?

16 A. What were they doing.  
17 What --- how did that involve the  
18 State Police, who in the  
19 Pennsylvania State Police it  
20 involved, when did it involve them,  
21 what did they do with it, why did  
22 they do it that way, and that ---  
23 that pretty much was the basis for  
24 requesting the inquiry.

25 Q. Well, that's what I'm

1 asking. You didn't have any  
2 knowledge of the Pennsylvania State  
3 Police doing their own inquiry;  
4 right?

5 A. Well, into what?

6 Q. Into these allegations of  
7 public corruption?

8 A. No, I don't think we had  
9 investigations into that.

10 Q. Okay. The information you  
11 had was that Captain Ober and  
12 Lieutenant Colonel Fikus knew of the  
13 probe, but did not --- didn't tell  
14 anybody.

15 A. That was the information  
16 that I had, yes.

17 Q. And the information that  
18 you had was that Captain Ober told  
19 Colonel Fikus and that Colonel Fikus  
20 told --- or did you? Did you know  
21 that Colonel Fikus had told Captain  
22 Ober to keep it confidential and not  
23 to divulge?

24 A. I'm not sure I did know  
25 that at that point.

1 Q. Okay. So in fairness to  
2 you at that point you didn't know  
3 that or you may not have, you might  
4 have, but the point is what you did  
5 know at that point, this much we can  
6 share with certainty, at the point  
7 that shortly after this point that  
8 you got the call from Colonel ---  
9 Lieutenant Colonel, I'm sorry, yeah,  
10 Lieutenant Colonel Coury, at that  
11 point you knew that Mr. Fikus and  
12 Mr. Ober had known something and had  
13 not immediately informed their  
14 superiors, presumably that would be  
15 Commissioner Evanko. Am I correct?

16 A. A ---.

17 Q. You know, fix that up.  
18 Respond to that completely as you  
19 can. That's --- you know, in other  
20 words, I'm not trying to lead you  
21 into some cul-de-sac with that.  
22 Basically what you knew at the time,  
23 in a nut shell, was that Ober and  
24 Fikus knew about this and had not  
25 reported it. Am I correct?

1 A. That's correct, yes.

2 Q. Okay. But nobody --- did  
3 it occur to anybody --- and there  
4 was a meeting. There was a  
5 meeting. Who was at that meeting by  
6 the way?

7 A. Which meeting?

8 Q. The meeting after  
9 Mr. Coury called you, the meeting  
10 that took place?

11 A. The next morning? I'm  
12 sure it was just the Commissioner,  
13 Colonel Coury and myself.

14 Q. Okay. Commissioner,  
15 Mr. Evanko, Mr. Coury and yourself?

16 A. Uh-huh (yes).

17 Q. Anyone else in that  
18 meeting?

19 A. Not that I'm aware of.

20 Q. Any other staff meetings  
21 you had on this matter where the  
22 Commissioner was present?

23 A. Just at the end when Major  
24 Williams and Major Wertz had  
25 completed their inquiry and were

1 turning the documents over.

2 Q. You were present at that  
3 time?

4 A. Well, you know, I don't  
5 know the answer to that. I know  
6 they came to me and met in my  
7 office, and then I took them in,  
8 into the Commissioner's office, and  
9 I'm just not sure whether I stayed  
10 in there or whether I left.

11 Q. You're not sure?

12 A. I'm just not sure. I just  
13 don't remember.

14 Q. Okay. All right. Now,  
15 was Mr. Brown in any of these  
16 meetings?

17 A. I did not meet with Mr.  
18 Brown.

19 Q. Pardon me?

20 A. I did not meet with Mr.  
21 Brown.

22 Q. Well, was he in any  
23 meetings with the Commissioner about  
24 these matters?

25 A. I don't know.

1 Q. So he could have been in  
2 meetings with the Commissioner or  
3 somebody else and you don't know  
4 that?

5 A. I don't know that.

6 Q. Is that Captain Brown now,  
7 by the way?

8 A. That's my understanding,  
9 yes.

10 Q. Okay. Now, tell me what  
11 went on in this meeting the next day  
12 that you had with the Commissioner  
13 and with Mr. Coury.

14 A. It was sort of just a  
15 general meeting where, you know, we  
16 wanted to find out what went on. I  
17 think the Commissioner said that  
18 he'd like to know what happened  
19 here, what went on here. I said,  
20 well, we need to have somebody get  
21 out and do something, make some sort  
22 of an inquiry in the matter. He  
23 said, okay, let's do that. I made  
24 the recommendation then that it be  
25 Major Wertz and Major Williams to be

1 assigned. That was agreed upon. I  
2 went out and asked each of them at  
3 that point to do that.

4 Q. Out in Phoenix?

5 A. Well, Major Wertz I talked  
6 to in Phoenix. Major Williams I  
7 think I met him up in --- up in  
8 Mountoursville.

9 Q. You met him up there?

10 A. Yes, I believe I did.

11 Q. What did you go up there  
12 for?

13 A. Well, and this is my  
14 recollection, this was just before  
15 we were to leave and it might have  
16 been the day before we were to leave  
17 to go to a CARE conference in  
18 Phoenix.

19 Q. Well, you didn't go up  
20 there to talk to him about that?

21 A. No, no, no, I went up  
22 there specifically to ask him to do  
23 this inquiry.

24 Q. You drove up there. Who  
25 went up with ---?

1 A. I flew up.

2 Q. You flew up?

3 A. Yes.

4 Q. You flew up to talk to him  
5 in Montoursville?

6 A. That's correct.

7 Q. I do not mean to be  
8 disrespectful by this, by this  
9 question. What was so God awful  
10 important that you would fly up to  
11 see him about finding out what Ober  
12 and Fikus did?

13 A. It was --- it was an  
14 inquiry that we wanted to get  
15 underway, get started. I was  
16 leaving I believe the next morning  
17 to go out to Phoenix, Arizona. In  
18 fact, I believe that was probably in  
19 the afternoon and, you know, I got  
20 it --- from my job, I go all over  
21 the State. And I flew most of the  
22 times.

23 Q. Okay.

24 A. So it was not unusual for  
25 me. Don't put any emphasis on the

1 fact that I flew from Harrisburg to  
2 Montoursville.

3 Q. You fly quite a bit for  
4 ---?

5 A. I fly quite a bit.

6 Q. For these things? Okay.  
7 Well, when you flew up there to see  
8 Major Williams, that was within days  
9 then I would assume from your  
10 responses, within days of when  
11 Colonel Evanko had been informed by  
12 Fikus and Ober about the matter?

13 A. And again I --- I would  
14 assume that also. I --- I can't  
15 give you a time frame, because I  
16 just don't know. Okay? I don't  
17 remember the dates. I don't know  
18 the dates that we went out there.

19 Q. Do you know the dates of  
20 when the CARE conference was?

21 A. The only thing I can tell  
22 you about it was it was in the  
23 spring.

24 Q. Spring?

25 A. The CARE conference is

1 always in the spring.

2 Q. May?

3 A. I don't know. I'd be  
4 guessing.

5 Q. All right. But there  
6 would be phone records there?

7 A. It certainly can be  
8 checked out, sure.

9 Q. It would be easy to check  
10 out the airplane records?

11 A. Exactly, yeah, exactly.

12 Q. What airport did you go  
13 into up there? You say  
14 Montoursville?

15 A. That was to Williamsport.

16 Q. You went into  
17 Williamsport, okay. You're normally  
18 headquartered where?

19 A. Here in Harrisburg.

20 Q. Just curious. What's your  
21 fly time up there?

22 A. I don't know. Probably 20  
23 minutes.

24 Q. Including ground time,  
25 taxi time and all that stuff?

1 A. I don't know the answer to  
2 that.

3 Q. Is that the double engine  
4 turbo prop they use out there or  
5 plane ---?

6 A. Single engine.

7 Q. Single engine?

8 A. Single engine 182.

9 Q. A Cessna 182, you make  
10 that flight in 20 minutes?

11 A. I'm guessing at that.  
12 That's about all there is. It's not  
13 that far up there by air. I don't  
14 know how long it takes you by car.  
15 It's over an hour.

16 Q. Straight shot. Straight  
17 shot, an hour-and-a-half at the most  
18 but ---?

19 A. You say an hour-and-a-half  
20 by car.

21 Q. At the most. The road's  
22 in quite good shape now.

23 A. The road.

24 Q. I know that because a lot  
25 of you guys set there and patrol

1 that road.

2 A. Rule of thumb is fly  
3 time's about one third of your  
4 driving time. That's the rule of  
5 thumb.

6 Q. Is that the rule of thumb?

7 A. 20 minutes may not be  
8 bad.

9 Q. You'd know better than I  
10 do. Okay. Let's go back to this  
11 situation where you have a meeting  
12 with Colonel Evanko and Colonel  
13 Coury. Who called that meeting?  
14 Did the Commissioner call that  
15 meeting?

16 A. I would expect he asked us  
17 to come into his office, yeah.

18 Q. Did you discuss anything  
19 else at that meeting?

20 A. I don't recall. We  
21 certainly could have. We met on a  
22 regular basis on a number of issues.

23 Q. Yeah, I would assume that  
24 --- okay. Does he have regular  
25 staff meetings or ---?

1 A. Well, sure. You know,  
2 there are monthly staff meetings of  
3 all the staff. I guess it's every  
4 two weeks.

5 Q. I was just ---?

6 A. Maybe it's every two  
7 weeks, I'm not sure.

8 Q. I was just looking for  
9 frequency. How often, every two  
10 weeks, every month. So this wasn't  
11 a regularly scheduled staff meeting?

12 A. No, the Commissioner and I  
13 met every day. I briefed him every  
14 day on what was going on out in the  
15 field and what was going on, so it's  
16 not unusual for me to meet with him  
17 two or three times some days.

18 Q. Okay. All right. So it's  
19 not unusual to have meetings, but  
20 you went in and you had a meeting on  
21 this issue. And you suggested  
22 Mr. Williams and Mr. Wertz. Right?

23 A. That's correct. That  
24 would be my recommendation.

25 Q. Okay. And that was

1   okayed, and did you --- did you talk  
2   about what the purpose of this  
3   inquiry was? What was the purpose  
4   of this inquiry? Why were you doing  
5   this? I know you said to find out  
6   what happened, but why --- why a  
7   formal inquiry? What was that  
8   about?

9   A.           Well, you know, I --- you  
10   have to --- before you can evaluate  
11   any kind of circumstances, you have  
12   to find out what happened. It  
13   doesn't matter what it amounts to.  
14   If you want to evaluate that  
15   somebody come down the sidewalk here  
16   and slipped and fell, you have to  
17   have somebody look into that. And  
18   ---.

19   Q.           Well, that's an accident,  
20   right?

21   A.           Well, whatever it is. If  
22   you're going to evaluate a certain  
23   circumstance, you're going to have  
24   to find out what the circumstance  
25   is.

1 Q. Well, a Trooper hauls off  
2 and punches his Sergeant, you've got  
3 to investigate that?

4 A. Well, sure.

5 Q. But nobody punched no  
6 one. No one had an accident. What  
7 were you investigating?

8 A. I wanted to find out who  
9 knew what, when they knew it, and  
10 who they told about it.

11 Q. Why?

12 A. Well, because the  
13 Commissioner asked for it.

14 Q. Oh.

15 A. And because, you know, in  
16 my opinion, chain of command was not  
17 followed. What little I knew, let's  
18 find out what it was. Why didn't  
19 he? You know, why didn't he tell  
20 Colonel Coury. Why didn't he tell  
21 his bureau director.

22 Q. I don't know.

23 A. I don't know either.

24 Q. Well, tell us --- you've  
25 looked at this and this is ---

1 you're a stickler for chain of  
2 command and you were consulted by  
3 the Commissioner. Did you ever  
4 reach a conclusion why he didn't?

5 A. A ---.

6 Q. I mean, why didn't he do  
7 that, Colonel? Why didn't he do  
8 that?

9 A. I don't know the answer to  
10 that. To this day, I don't know the  
11 answer.

12 Q. Well, I apologize.

13 A. Excuse me, you'd have to  
14 ask him that.

15 Q. Yes, sir. I don't mean to  
16 ask you to tell us what was in his  
17 mind. That's clearly speculation,  
18 speculative on your part. But you  
19 have reviewed the, quote, unquote,  
20 work product in this matter. Okay?  
21 You had the two investigators  
22 appointed, they were appointed on  
23 your recommendation. You gave them  
24 the order to march, or told them  
25 what to do. We already know that.

1                   What did you --- what  
2                   conclusion did you come to as to why  
3                   Ober and Fikus did this? In your  
4                   opinion, you said they violated the  
5                   chain of command.

6                   A.               Well, in the first place,  
7                   I didn't ---

8                   Q.               Yeah.

9                   A.               --- come to any  
10                  conclusion.

11                  Q.               Oh, okay. All right.

12                  A.               Okay. And I told you I  
13                  don't know why he did anything. To  
14                  this day, I don't know why he didn't  
15                  let Colonel Coury know or Colonel  
16                  --- or Major Conley. I want to  
17                  correct also a comment that you made  
18                  that I had --- you said I had  
19                  reviewed this work product. That is  
20                  not correct either.

21                  Q.               Okay. Sorry about that.

22                  A.               I asked those --- those  
23                  two Majors to take a look at this.  
24                  They completed their inquiry. They  
25                  came back to me. They said their

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1 inquiry is completed. They'd like  
2 to give it to the Commissioner. I  
3 said, okay, stop down my office.  
4 They stopped in. We proceeded to  
5 the Commissioner. They gave it to  
6 the Commissioner.

7 Q. Okay. You see, that's  
8 where I'm a little bit confused. I  
9 thought you indicated that he  
10 violated the chain of command and  
11 you told us you're a stickler for  
12 the chain of command. Now, you're  
13 telling us you didn't review the  
14 work product?

15 A. I'm telling you that ---.

16 Q. I'm not trying to trick  
17 you.

18 A. No, but you're not  
19 listening to what I'm saying.

20 Q. I'm twisting things. I  
21 don't mean to.

22 A. Exactly.

23 Q. All right. Go ahead.

24 A. What I told you was if the  
25 information that we heard that

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1 initial time, that very first  
2 information, was correct, then in my  
3 opinion ---

4 Q. Okay.

5 A. --- he did not follow his  
6 chain of command. Okay.

7 Q. Okay. Sir ---?

8 A. That was the purpose of  
9 inquiry to find out who knew what,  
10 when, why, how, those sorts of  
11 things.

12 Q. But, sir, I thought you  
13 opined that you offered us as a ---  
14 in part of your response that he  
15 didn't tell Coury and he didn't tell  
16 Conley. Now, we know he didn't tell  
17 Conley, but what's the difference  
18 between telling Coury and telling  
19 Fikus?

20 A. Colonel Coury was in his  
21 chain of command, was the Deputy  
22 Commissioner in charge of what he  
23 was doing at the time. I think he  
24 was assigned to BPR, and that came  
25 under Colonel Coury's area of

1 responsibility.

2 Q. What other regulations  
3 that says an officer cannot report  
4 or share information with a superior  
5 officer who is not in his direct  
6 chain of command? I don't mean  
7 general supervision. I mean direct  
8 chain of command. What's the  
9 regulation there?

10 A. I have to plead ignorance  
11 just like earlier with Major Wertz.

12 Q. Okay.

13 A. I can't tell you what's  
14 written there and what isn't written  
15 there.

16 Q. Okay.

17 A. It's just a understanding  
18 of chain of command.

19 Q. Just an understanding.

20 A. I can be corrected.

21 Q. Yeah, I was in the Army.

22 A. I can be corrected, you  
23 understand.

24 Q. I keep going back to the  
25 Army. You're going to have to bear

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1 with me, please. This is the only  
2 experience I have. I've never been  
3 in the police organization and I  
4 understand the Pennsylvania State  
5 Police is an exceptionally fine one,  
6 but I don't know how you do business  
7 there. So I can only draw on what I  
8 knew and my opinion about whether  
9 that would violate an Army rule,  
10 which I know it would not is  
11 meaningless here, but I'm awful  
12 proud of the U.S. Army. I can tell  
13 you that. And I was in a couple of  
14 great outfits. But to me I don't  
15 know if you can tell me how if it's  
16 not written down or you're not sure  
17 if it might be written down, if you  
18 feel it might be, how does in your  
19 --- based on your countless years  
20 of experience as a stickler for  
21 chain of command, how does an  
22 inferior violate a chain of command  
23 if he shares information with a  
24 superior, not a colleague, not an  
25 under --- not an equal and not an

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1 underling, who is his superior if  
2 for no other reason if he trusted  
3 him or liked him, how does that  
4 violate any chain of command  
5 prerogative in the Pennsylvania  
6 State Police? Now, let me tell you  
7 what I'm going to follow this up  
8 with.

9 I'm going to ask if you  
10 go, if you're not in somebody's  
11 chain of command but they trust you,  
12 admire you and like you, and they  
13 ask your advice, just simply ask  
14 your advice, I've got to unload  
15 this, I've got concerns, I need to  
16 ask your advice, and you say you  
17 keep it to yourself and don't you  
18 talk to anybody else, okay? I'm  
19 going to come back and ask you what  
20 effect that has on this chain of  
21 events, because that's a fact and we  
22 know it's there. Everybody admits  
23 it's there. But let's begin so you  
24 know where I'm going at, right, you  
25 know, what I'm going to try to get

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1 at here, so you're not confused or  
2 misled about anything, my first  
3 question would be in this little  
4 series of questions here, my first  
5 question would be like this, what  
6 rule do I violate, if it's not  
7 written, what informal rule known to  
8 you do I violate if I am a Captain  
9 in the Pennsylvania State Police who  
10 for any reason knows, likes,  
11 respects, or has good solid  
12 institutional reasons because I  
13 think they're all there, and I go to  
14 a Lieutenant Colonel, I share  
15 information, what's wrong with  
16 that? I mean, do I have a duty,  
17 here's the subquestions so you make  
18 sure there's no confusion on this.  
19 You know, do I have a duty to go to  
20 my immediate superior first? Is  
21 that written? Is that a rule? Do I  
22 have a duty not to tell anybody in  
23 the world until I tell my immediate  
24 supervisor? Can you explain what in  
25 terms of written and unwritten rules

1 of the Pennsylvania State Police  
2 Captain Ober did wrong?

3 ATTORNEY REYNOLDS:

4 I'm going to object  
5 as to form. There were  
6 about five questions in  
7 there.

8 ATTORNEY BAILEY:

9 No, there's about ten  
10 of them. Correct,  
11 correct.

12 ATTORNEY REYNOLDS:

13 If the witness  
14 understands what he's  
15 answering, he may answer.

16 BY ATTORNEY BAILEY:

17 Q. Do you understand where  
18 I'm coming from? I think I asked  
19 ---?

20 A. I think I do, yes.

21 Q. Can you tell us in a good  
22 old common sense way without my  
23 lawyer --- multitude of lawyer  
24 questions, and your counsel's  
25 objection is well taken, the bottom

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1 line question is, you know, what did  
2 Captain Ober do wrong here?

3 A. Captain Ober did not tell  
4 his immediate chain of command what  
5 had transpired. I think he had a  
6 responsibility to do that. He did  
7 not. Okay? There's a difference  
8 --- in my opinion, there is a  
9 difference in going to somebody else  
10 for some advice on a matter, okay?  
11 But I will tell you that if Captain  
12 Ober came to me with this  
13 information, any information, okay,  
14 that did not pertain to my area of  
15 responsibility, I would tell him  
16 that he needs to get back in and  
17 talk to his Lieutenant Colonel about  
18 that. If --- you know, there are  
19 times when you'll sit down and say,  
20 well, my advice to you would be  
21 this, however, you need to talk to  
22 Colonel Coury about that or you need  
23 to talk to your bureau director  
24 about that.

25 Q. That's what you would have

1 done?

2 A. That's exactly what I  
3 would have done. That's why ---.

4 Q. That's not Captain Ober's  
5 function, is it? Captain Ober's not  
6 the one that looked in the mirror  
7 and said, Captain Ober, you're not  
8 to talk to anyone. He was given an  
9 order by Captain Fikus, wasn't he?

10 A. Well, Captain Ober in my  
11 opinion should have been gone right  
12 to Colonel Wertz in my opinion.

13 Q. Okay.

14 A. These guys have cell  
15 phones. They have car phones. They  
16 have phones in their car. There's  
17 no reason at all why you can't get a  
18 hold of somebody.

19 Q. Well, maybe the FBI was  
20 listening. There's a political  
21 corruption probe into the State  
22 Police and maybe into the Governor's  
23 office.

24 A. You want me to get started  
25 on that, I'll get started on that.

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1 Q. No, I don't want you to  
2 get started on it. I just want to  
3 say to you ---.

4 A. No, I will tell you this  
5 much, okay?

6 Q. Yeah.

7 A. Most investigators, a good  
8 investigator will take a look at the  
9 information that's received. The  
10 first thing they'll ask themselves  
11 is, is this information reasonable?  
12 Can this be considered reasonable  
13 information? Someone from outside  
14 the department may not know whether  
15 the information in this particular  
16 case, whether somebody within the  
17 department was selling jobs or not,  
18 would not know whether that  
19 information was reasonable or not.  
20 But it is my opinion that somebody  
21 inside our organization with the  
22 experiences that Captain Ober had  
23 should right away recognize that as  
24 being not reasonable information.  
25 Captain Ober has enough experience

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1 within the headquarters in the  
2 Pennsylvania State Police to know  
3 that. I think it's virtually  
4 impossible to predetermine the  
5 outcome of any cadet assignment.  
6 Okay? Now, with that information  
7 ---.

8 Q. Don't you have ---?

9 A. With that knowledge.

10 Q. Don't you have children  
11 ---?

12 A. With that experience,  
13 wouldn't you --- why would you  
14 suspect that a Lieutenant Colonel  
15 could do that?

16 ATTORNEY BAILEY:

17 Just a minute.

18 A. Why would you not --- I'm  
19 sorry.

20 BY ATTORNEY BAILEY:

21 Q. All right. Now, just a  
22 second. Let's ---?

23 A. Well, let me just finish  
24 what I was going to say.

25 Q. Sure.

1           A.           Why would you not tell  
2           your bureau director under those  
3           circumstances? Now, if Captain Ober  
4           had not had those kinds of  
5           experiences, those kinds of  
6           experience within the department,  
7           that kind of knowledge in a  
8           headquarters setting, then perhaps I  
9           can understand.

10          Q.           What I'm asking is, are  
11          the rules of the Pennsylvania State  
12          Police so clear and are they written  
13          down? One of the issues in this  
14          case is when a certain chain of  
15          command subsection was added to the  
16          regulations. There's a major  
17          material issue in this case and  
18          regardless what the trial judge does  
19          with it, I'm going to follow through  
20          on it to find out when it was  
21          promulgated and worked up to this  
22          case. But to follow up, I'm going  
23          to ask you what Pennsylvania State  
24          Police rules and what Pennsylvania  
25          State Police informal customs,

1 practices or usage would indicate  
2 that he, first of all, has to go to  
3 his immediate supervisor right away  
4 before he tells anyone and also  
5 disregard an order from a Lieutenant  
6 Colonel that he happens to consult  
7 for advice? I don't understand,  
8 because I have not been able to find  
9 and with all due respect and I have  
10 some limited experience as I said in  
11 a different outfit, but can you tell  
12 me what rules were violated?

13 A. I don't know if there was  
14 any.

15 Q. You don't know if there  
16 was any?

17 A. I don't know if there was  
18 any.

19 Q. Okay. Now, let me ask you  
20 this. You're telling us that based  
21 upon the information that Captain  
22 Ober received, he should have known  
23 better. He should have known that  
24 the FBI was missing a --- was making  
25 an error or there wasn't a good

1 reasonable basis. Right?

2 A. Yes, I think so.

3 Q. Okay. Have you ever  
4 looked into, sir, the underlying  
5 investigation for some of the things  
6 that these --- that the FBI was  
7 given, some of the information they  
8 were given?

9 A. No, I do not.

10 Q. Well, thank God it ended  
11 up being apparently, I don't know.  
12 At this stage, we don't know if  
13 somebody scuttled that  
14 investigation. We just don't know.  
15 But there's very good reason to  
16 believe that there was nothing to  
17 the puffings or whatever, of some of  
18 the folks that were doing wrong  
19 things, but you'll admit that  
20 Captain Ober was given information  
21 to indicate that there could be  
22 people in the Governor's office  
23 involved. Right?

24 A. (NODS HEAD).

25 Q. Okay. And that --- was he

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1 are friends and there are friends.  
2 Okay. Is he a friend of yours in  
3 the sense that you could confide in  
4 him or talk with him about things?

5 A. No, I don't do that. I  
6 mean, he --- he is a --- he's not a  
7 friend socially. We don't  
8 socialize.

9 Q. Okay.

10 A. But professionally we've  
11 dealt with each other on a  
12 professional basis every day, you  
13 know. There's no animosity, there's  
14 no --- none of that.

15 Q. It's professional?

16 A. It's professional, yes.

17 Q. Professional callings?

18 A. Yes.

19 Q. Okay. In a large  
20 organization?

21 A. It's just that we never  
22 developed a friendship through our  
23 careers. We were never hardly ever  
24 in the same place.

25 ATTORNEY REYNOLDS:

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1                   Before we get any  
2                   further, do you want to  
3                   take a break?

4       A.           I'm fine so far.

5                   ATTORNEY REYNOLDS:

6                   Okay. If you want  
7                   to, just go ahead.

8       A.           Okay.

9       BY ATTORNEY BAILEY:

10      Q.           Yeah, you --- yeah. He  
11                   has to make a phone call. He  
12                   doesn't have to be here anyway.

13                   Okay. Now, did you ever discuss the  
14                   Ober matter with Colonel Fikus?

15      A.           You know, I don't --- I  
16                   don't recall. I wouldn't know why I  
17                   would, but I don't recall that I  
18                   did.

19      Q.           All right. Did you ever  
20                   ---?

21      A.           If Colonel Fikus walked in  
22                   here and said, yeah, I had this  
23                   conversation on this date and blah,  
24                   blah, blah, maybe it would jar a  
25                   recollection, but I don't have that

1 recollection at all actually.

2 Q. Okay. Do you know a Mark  
3 Campbell?

4 A. I do know Mark Campbell.

5 Q. And how long have you  
6 known Mr. Campbell?

7 A. I've known Mr. Campbell  
8 since I was assigned as Deputy  
9 Commissioner.

10 Q. And when were you assigned  
11 as Deputy Commissioner?

12 A. That was probably February  
13 of 1995 perhaps.

14 Q. Aside from your own  
15 ambition, who was responsible for  
16 you becoming, and I mean that in a  
17 very positive sense, who was  
18 responsible for you becoming a  
19 Deputy Commissioner? Is there ---  
20 these are appointed positions. How  
21 did you get there?

22 A. Colonel Evanko spoke on my  
23 behalf and I don't know who he spoke  
24 to. I'm --- I think he spoke to the  
25 Governor, but I don't know who

1 else.

2 Q. All right. Was  
3 Mr. Campbell part of that process?

4 A. I don't know.

5 Q. All right.

6 A. Wouldn't surprise me. Was  
7 he --- he's like assistant chief of  
8 staff to the Governor. You know,  
9 he's the guy down there.

10 Q. I --- that's part of his  
11 job and that's the way the  
12 government should be run. You know,  
13 please don't read anything into  
14 that. We're trying to find out some  
15 of these connections and some of  
16 these relationships. Did you have  
17 any conversations with Mr. Campbell  
18 about the Ober matter?

19 A. I do not.

20 Q. Do you know whether  
21 Colonel Evanko ever had any  
22 conversations with Mr. Campbell  
23 about the Ober matter?

24 A. I do not know.

25 Q. Did Mr. --- excuse me.

1 Did Colonel Evanko ever indicate any  
2 discussions with Mr. Campbell or  
3 anyone else in the Governor's office  
4 about the Ober matter?

5 A. I don't recall. But I  
6 will qualify that by saying that  
7 Colonel Evanko was in,  
8 quote/unquote, Mark Campbell's chain  
9 of command. Okay? So I would  
10 expect that it would not be  
11 unreasonable that he called him and  
12 told him what was going on. I have  
13 no knowledge of that.

14 Q. Okay. Now, at what point  
15 did you learn that the FBI had  
16 indicated that there might be some  
17 connection with this, this political  
18 corruption into the Governor's  
19 office, there might be some  
20 connection? Now, we understand that  
21 it ended up not being and all that.  
22 But my question is, when did ---  
23 when did you first learn that the  
24 FBI had facts that raised the  
25 question about the Governor's office

1 being involved?

2 A. Well, it would have been  
3 in those first early days there.  
4 I'm not sure that Colonel Coury  
5 would have told me about that, that  
6 day, but perhaps the next day.

7 Q. All right. By that day,  
8 you mean the day that Colonel Evanko  
9 was informed?

10 A. No. That day would be the  
11 day after Colonel Evanko was  
12 informed.

13 Q. No, I --- okay. That's  
14 what I mean. That's my error.  
15 Okay. Now, do you know Louie Freed?

16 A. I'm not friends with Louie  
17 Freed.

18 Q. Well, I mean ---?

19 A. I've met him. I've  
20 conversed with him, but I do not  
21 know him.

22 Q. Is it fair to say that  
23 personal friendship aside, from  
24 professionally the Pennsylvania  
25 State Police and Louie Freed, who at

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1 the time was the FBI director, have  
2 to maintain some kind of  
3 relationship; in other words, the  
4 two organizations, the Pennsylvania  
5 State Police and the FBI have to  
6 maintain a relationship in the  
7 interests of effective law  
8 enforcement in the United States,  
9 particularly in Pennsylvania; is  
10 that correct?

11 A. I think it's a fair  
12 statement.

13 Q. Okay. Do you know whether  
14 Colonel Evanko is familiar with  
15 Judge Freed on a --- Director Freed  
16 on a personal basis?

17 A. I ---.

18 Q. You know, in other words,  
19 are they more than professional  
20 acquaintances, do you know?

21 A. I don't think so. I don't  
22 know.

23 Q. The Complaint indicates,  
24 the allegation is made in the  
25 Complaint, I can dig the paragraph

1 out if you want and I'll do that if  
2 you need me to or your attorney  
3 wants me to, that Colonel Evanko  
4 indicated that he was going to  
5 contact Louie Freed over this  
6 matter. Do you have a recollection  
7 of that?

8 A. I do not.

9 Q. Well, aside from the  
10 Complaint if it's mentioned in  
11 there, did you ever hear that the  
12 FBI was contacted about this matter?

13 A. Certainly they were  
14 contacted by Williams and Wertz.  
15 And I think that would have been  
16 Agent Coon. I think that's what  
17 Wertz testified to this morning.

18 Q. Well, let's set that  
19 aside. Do you know if anybody above  
20 Special Agent Wertz --- oh, excuse  
21 me, Special Agent Coon was contacted  
22 by Wertz or anyone?

23 A. I don't know that. I  
24 don't know if anyone else would or  
25 not.

1 Q. Do you know if Colonel  
2 Evanko contacted anybody in the FBI?

3 A. I do not know.

4 Q. Do you know where Special  
5 Agent Coon is now?

6 A. I do not.

7 Q. Mr. Coon is listed as one  
8 of your witnesses. Do you know who  
9 talked to Mr. Coon aside from Wertz  
10 and Mr. Williams, if anyone?

11 A. I do not.

12 Q. Do you know whether the  
13 lawyers, your lawyers have talked to  
14 him?

15 A. I do not know.

16 Q. Well, do you know where  
17 Mr. Coon is now?

18 A. I do not.

19 Q. It indicated that aside  
20 from Mr. Wertz who says he did not  
21 talk with Mr. Coon, by the way, do  
22 you know when Mr. --- when  
23 Mr. Williams I guess it would have  
24 been talked to Mr. Coon?

25 A. I do not know when he did

1 that, no.

2 Q. You were here when  
3 Mr. Wertz testified that his best  
4 recollection was that Mr. Williams  
5 talked to Mr. Coon before  
6 Mr. Williams and Mr. Wertz talked in  
7 Phoenix. You remember that?

8 A. I remember Mr. Wertz or  
9 Major Wertz talking about that,  
10 yes.

11 Q. So when you indicated  
12 Williams and Wertz talked to Coon,  
13 you didn't mean to imply that you  
14 have any facts indicating that  
15 Mr. Wertz talked to Mr. Coon?

16 A. No, no, no, it's just they  
17 were in an investigative --- I call  
18 it an investigative team, but they  
19 were a team of investigators doing  
20 it so if I --- I didn't mean to  
21 mislead you there.

22 Q. Well, is there an  
23 interview in the work product from  
24 --- with Mr. Coon?

25 A. I don't know that. I'm

1 sure there must be. I would expect  
2 them to do that, but I did not  
3 review it so I'm not going to answer  
4 your question in an affirmative  
5 fashion.

6 Q. Because you don't know?

7 A. Because I don't know  
8 because I didn't read it. I would  
9 expect, however, that they would  
10 have done that and that that would  
11 be written down.

12 Q. As head of operations do  
13 you become involved in transfers,  
14 personnel transfers?

15 A. That's the Commissioner's  
16 prerogative. Sometimes he asks for  
17 recommendations.

18 Q. Well, who sent Mr. Ober  
19 out to Washington?

20 A. How do you mean by sent  
21 Mr. Ober out to Washington.

22 Q. I don't know how many  
23 verbs we can come up with. Sent,  
24 transferred, assigned, suggested, I  
25 don't know, whatever word you want

1 to use but ---?

2 A. That would have been the  
3 Commissioner's.

4 Q. Commissioner did that?

5 A. Commissioner's  
6 responsibility to do that.

7 Q. Okay. Well, when did you  
8 first learn about it from the  
9 Commissioner?

10 A. Well, we would have --- if  
11 we had a meeting, I don't recall the  
12 particular meeting that we had, but  
13 I'm sure we did. But it seems to  
14 me at the time, well, let me back up  
15 a little bit and explain how all  
16 this gets started, I think. I think  
17 it would be helpful. I had just  
18 recently been to San Diego,  
19 California, and met with --- in  
20 fact, Major Wertz and I were both  
21 out there, met with California  
22 Highway Patrol and San Diego Police  
23 Department, because they had  
24 recently handled security for the  
25 Republican National Convention that

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1 had been held out there some three  
2 or four years prior to this. So we,  
3 since that convention was coming to  
4 Philadelphia, I went out along with  
5 Major Wertz to San Diego to discuss  
6 what they had done, how they had  
7 done it.

8 One of the recommendations  
9 that they made to us, and it was a  
10 good one, is that as time gets  
11 closer to the event, okay, the ---  
12 your task force commander needs more  
13 and more help because more and more  
14 things are beginning to happen as  
15 the event gets closer and closer.

16 Now, at that time there  
17 were two events going on. One, the  
18 Republican National Convention in  
19 eastern Pennsylvania and the  
20 National Governor's Association  
21 meeting actually in State College,  
22 but that would come under our  
23 western area command.

24 So that, having as a  
25 background, okay, I think and again

1 this is my recollection, and I don't  
2 want to misstate anything, but I  
3 think at the time Captain Ober was  
4 in between assignments, maybe with  
5 IIMS in BPR. And at that point, I  
6 recommended that he be considered to  
7 go out and assist Major Supinka with  
8 the work for the National Governors  
9 Association meeting.

10 Major Wertz was a task  
11 force commander for the Republican  
12 National Convention and he had a  
13 similar person assigned to his  
14 organizational group out there for  
15 doing those preparations. So I  
16 thought that that was very important  
17 for Major Supinka to have somebody  
18 do that. Captain Ober was  
19 available. He had skills that he  
20 could have been of great help out  
21 there and it would have been a good  
22 thing, because he would have worked  
23 under the tutelage of one of our  
24 very best area commanders as well.  
25 So I thought it was a good, good

1 thing, a win-win thing.

2 Q. A win-win thing?

3 A. Uh-huh (yes).

4 Q. So you went to Captain  
5 Ober or you had him come in to  
6 discuss it with him?

7 A. I didn't discuss it at all  
8 with Captain Ober. That was my  
9 recommendation to the Commissioner  
10 that Captain Ober be considered for  
11 that position. I thought that would  
12 be good for the department, it would  
13 be good for Captain Ober, it would  
14 be good for Major Supinka.

15 Q. You didn't do that,  
16 because you wanted to pay Captain  
17 Ober back, did you?

18 A. No, sir. Let me --- let  
19 me clarify that right now before you  
20 get any misconceptions. I've known  
21 Captain Ober, I don't know how many  
22 years, but a number of years. And I  
23 have the utmost respect for Captain  
24 Ober personally and for Captain  
25 Ober's abilities, administrative

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1 abilities. I supported him 120  
2 percent if not more so when he was  
3 the director of systems process  
4 review. I think he did a 100  
5 percent job there. He took that  
6 particular division from a period  
7 when they were having a tremendous  
8 amount of difficulty to a well-run  
9 division and did very, very well  
10 with that. I relied on him  
11 immensely to keep me informed of  
12 what he was finding or his folks  
13 were finding when they were doing  
14 their reviews of the stations. So,  
15 you know, let me clarify right now  
16 that there's no get-even. There's  
17 no, you know, I do not like Darrell  
18 Ober at all. Okay? In fact, I have  
19 a great deal of respect for his  
20 abilities, particularly his  
21 administrative abilities.

22 Q. Well, there was an  
23 emergency need for him out there in  
24 Washington. Right?

25 A. There was a need out

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1 given information to believe that  
2 there might be people involved in  
3 the Legislature; right?

4 A. (NODS HEAD).

5 Q. And did you also come on  
6 information that indicated that  
7 there might be, quote/unquote,  
8 higher ups in the Pennsylvania State  
9 Police involved? Do you know  
10 whether that was ever indicated?

11 A. I --- I'm sure it was. I  
12 don't --- can't tell you where that  
13 came from, when it came from or from  
14 whom it came, but, yes, I'm sure  
15 that's correct.

16 Q. All right. Now, your  
17 response to me in fairness to you,  
18 was that Captain Ober should have  
19 known enough to know that you  
20 couldn't effect the process that way  
21 through those people. Right? In  
22 other words, that the FBI may not  
23 have known that and would not have  
24 had a way to know that, but Captain  
25 Ober should have known that was just

1 not reasonable?

2 A. Just not reasonable,  
3 that's correct.

4 Q. Okay. Well, I maybe have  
5 access to a lot more information  
6 maybe than Captain Ober does about a  
7 lot of things. Weren't there issues  
8 in the Pennsylvania State Police  
9 about sons or relatives of members  
10 being approved even though they  
11 weren't recommended for membership  
12 in a cadet class?

13 A. I don't know anything  
14 about that.

15 Q. Have you ever heard about  
16 such a thing?

17 A. Never heard anything ---  
18 not during the time where I was in a  
19 position where I would have heard  
20 about anything like that.

21 Q. All right. All right.  
22 Okay. Fair enough. Fair enough.  
23 Let me change direction then. You  
24 don't have any knowledge of anything  
25 like that. Now, let's --- let's

1 return then. You have this meeting  
2 and there's a meeting in there where  
3 you've got Mr. Coury, yourself and  
4 the Commissioner.

5 Do you remember what the  
6 Commissioner said, if anything,  
7 about Colonel Fikus?

8 A. No, I don't know if he  
9 said anything.

10 Q. Do you know whether there  
11 was any discussion about  
12 investigating or inquiring into the  
13 circumstances surrounding what  
14 Colonel Fikus did?

15 A. That would have been part  
16 and parcel to a complete inquiry.

17 Q. Do you know whether  
18 Colonel Fikus was ever read his  
19 rights and an inquiry --- I mean,  
20 strike that.

21 As we know from this  
22 morning and you may not have  
23 personal knowledge of this, you know  
24 that Captain Ober was addressed from  
25 the formal point of here's a --- an

1 inquiry, here's a notice and you're  
2 being --- you know, you've got to  
3 sit here and answer questions. This  
4 is not an informal give or take.  
5 This is a formal inquiry of some  
6 kind. Anyway we're going to check  
7 into this. You know that happened;  
8 right?

9 A. Well, I do from talking,  
10 listening to Major Wertz. I knew he  
11 was interviewed. I didn't know what  
12 ---.

13 Q. Okay.

14 A. You know, how that was  
15 accomplished.

16 Q. Major Wertz indicated that  
17 there may have been some other  
18 individual who was also given their  
19 rights, so to speak, or read their  
20 rights as it's comes and its  
21 progeny. Do you know who the other  
22 individual was who was given their  
23 warnings or their rights?

24 A. I do not.

25 Q. Okay. Sir, you were

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1 interviewed at one point by the two  
2 investigators, right?

3 A. Yes. I --- I --- Major  
4 Wertz says so, and I agree. I'm  
5 sure he would have had to.

6 Q. Do you remember the  
7 interview?

8 A. No, I do not.

9 Q. Do you remember who was  
10 present?

11 A. I don't remember the  
12 interview.

13 Q. Okay. Aside from flying  
14 up to Williamsport to meet with  
15 Major Williams and the meeting in  
16 Phoenix, did you have any other  
17 meetings with --- and the interview  
18 if it took place, I understand you  
19 don't remember, did you have any  
20 other meetings with Major Williams  
21 or Major Wertz?

22 A. I --- I can't be specific  
23 about the meeting, what went on in  
24 the meeting, but there was one other  
25 meeting, the Commissioner wanted to

1 meet with and that was shortly after  
2 they were assigned. And my  
3 recollection is that it was shortly  
4 after we came back from Phoenix, was  
5 that he wanted to meet with Major  
6 Williams and Major Wertz, and I was  
7 present at that meeting.

8 Q. Wasn't Colonel Evanko told  
9 he shouldn't do this?

10 A. I don't know that.

11 Q. Do you know of anyone that  
12 told Colonel Evanko that he didn't  
13 have a basis or a right to make an  
14 inquiry into Captain Ober?

15 A. Oh, I don't know if  
16 anybody ever told him, not to my  
17 knowledge.

18 Q. Why not?

19 A. I never heard that. I  
20 would not have told him that.

21 Q. So you would have done it?

22 A. I would have done it.

23 Q. Well, if --- if the FBI  
24 had come to you and asked you to  
25 keep an investigation confidential

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1 that they're investigating Colonel  
2 Evanko, would you have told Colonel  
3 Evanko?

4 A. I probably would have,  
5 yes.

6 Q. Oh --- strike that.

7 A. Depending on those  
8 circumstances, I probably would  
9 have.

10 Q. Okay. All right. Okay.  
11 You'd indicated that at some point  
12 after Major Williams and Major Wertz  
13 had been assigned the task of making  
14 the inquiry into Captain Ober, there  
15 was a meeting with Colonel Evanko  
16 wanted to talk to them?

17 A. That's correct.

18 Q. And you were present?

19 A. I believe I was.

20 Q. Can you tell us what  
21 occurred in that meeting?

22 A. It was --- the purpose of  
23 the meeting I can't give you. I  
24 can't tell you exactly verbatim what  
25 was said in the meeting. But

1 Colonel Evanko wanted to make sure  
2 that they just did a fair, thorough  
3 inquiry into the matter. I mean,  
4 that was it. He wanted the --- just  
5 give me the facts. You don't  
6 editorialize. You don't give me any  
7 of your opinions. Just give me the  
8 facts to what went on here.

9 Q. These are --- you know,  
10 I've been at an occasion --- I know  
11 Williams from before. I never met  
12 Mr. Wertz before. I've deposed both  
13 of these officers. I must tell you  
14 I'm very impressed with the  
15 professionalism and intelligence and  
16 the articulate --- the Pennsylvania  
17 State Police is an absolutely fine  
18 people and, you know, I add you to  
19 that list. I mean, I'm talking  
20 about the professionalism.

21 Why would you need to tell  
22 people with the intelligence and the  
23 skill and abilities of people like  
24 Williams and Wertz to do an  
25 objective evaluation? Why? I mean

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1 --- I mean, why is it necessary to  
2 even tell them that? I assume these  
3 guys are pretty sharp fellows. Why  
4 do you need to tell them that?

5 A. You'll have to ask the  
6 Commissioner that, I don't know why  
7 he wanted to do that, but he did.

8 Q. All right. How ---?

9 A. And I think it's to his  
10 credit.

11 Q. Okay. And how long was  
12 --- this took place some time after  
13 you came back from Phoenix, I  
14 assume?

15 A. Yeah, that's my  
16 understanding.

17 Q. Do you know how long, what  
18 period of time the inquiry spanned?

19 A. I do not. I'm sorry. I  
20 mean, I'm sure it can be determined

21 ---

22 Q. Yeah.

23 A. --- factually by looking  
24 at some documents and things, but I  
25 don't have that knowledge.

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1 Q. Okay. Sir, the --- when  
2 you were here this morning, you  
3 heard --- you heard Mr. Wertz  
4 talking about a list that --- you  
5 heard me ask him questions and him  
6 respond with a list of witnesses.  
7 You remember that?

8 A. Uh-huh (yes).

9 Q. And let me --- I tell you  
10 I wrote them down so let me tell you  
11 what his best recollection was.

12 Colonel Fikus, Major Conley, Major  
13 Merriman, a Sifery or Sifert. Does  
14 that name mean anything to you?

15 A. I expect it's Sifert.

16 Q. Sifert. I know --- okay.  
17 Sifert, S-I-F-E-R-T, something like  
18 that.

19 A. That's my --- that's my  
20 ---.

21 Q. That's a guess.

22 A. It's my guess, yeah.

23 Q. Best as you can?

24 A. Supposition.

25 Q. Okay. Colonel Westcott,

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1 yourself, Colonel Evanko and Colonel  
2 Coury. Did you have any input at  
3 all as to what witnesses would be  
4 contacted during the inquiry?

5 A. No, no.

6 Q. Sir, do you have a  
7 recollection of whether or not  
8 Colonel Evanko had any input into  
9 it?

10 A. I would expect not.  
11 Again, you hit the nail right on the  
12 head there. These are good  
13 competent investigators. That's why  
14 they were chosen, because they're  
15 good competent investigators.

16 Q. They seemed very sharp to  
17 me.

18 A. And they're going to be  
19 very fair to everybody that's  
20 involved in this thing, to gather  
21 the facts accurately. That's why  
22 they were chosen. When you have  
23 good investigators like that, there  
24 was no need for me to assign them a  
25 certain interview or make sure you

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1 do that or make sure you do this,  
2 they're certainly going to do it.  
3 It's going to get done.

4 Q. Okay. One thing, though,  
5 I have a problem, I have experience  
6 with it, sometimes when  
7 investigative work product is  
8 reviewed, there are questions like  
9 why didn't you interview so and so  
10 and did you ask these questions, did  
11 you find out an answer to that?  
12 Everybody knows there's no such  
13 thing as a perfect investigation and  
14 it's easy to second-guess somebody  
15 else's investigation. My question  
16 is, did Colonel Evanko, did you, did  
17 Colonel Coury or anyone else discuss  
18 the work product of this  
19 investigation with these fellows and  
20 ask them if they interviewed this  
21 person, interviewed that person, or  
22 for that matter make suggestions  
23 during the course of the  
24 investigation?

25 A. I don't believe so. I did

1 not. First of all, as I said  
2 before, I did not review the work  
3 product.

4 Q. Yeah.

5 A. So I would not have made  
6 any recommendations that, you know,  
7 check this point with this person or  
8 that point with that person, I just  
9 didn't do that. And I'm reasonably  
10 certain that during the course of  
11 that inquiry, and we talked to these  
12 fellows on a daily basis, you know,  
13 several times a week if not daily.

14 Q. Right.

15 A. As I did all the area  
16 commanders, I'm --- other than  
17 asking, well, how's things going,  
18 you know.

19 Q. Yeah.

20 A. How are you progressing  
21 with this, you know, I don't think I  
22 had any conversation with them,  
23 certainly not specific, you know,  
24 that they talked to so and so and  
25 learned this or that or the other

1 thing. I didn't. I didn't do  
2 that.

3 Q. Okay. In the course ---  
4 do you have a recollection again of  
5 like how much time the inquiry  
6 spanned?

7 A. No, I don't. No. As I  
8 said, we can figure that out, but I  
9 don't know that now.

10 Q. Yeah, I can. I'm just  
11 wondering if that comes back to  
12 you. If that comes back to you how  
13 much time they spent, I remember  
14 Mr. Wertz indicated he thought it  
15 was weeks but he's not sure either.  
16 I'd appreciate it if you'd address  
17 that.

18 Did you ever have a  
19 discussion with Colonel Fikus about  
20 this matter?

21 A. I'm not sure.

22 Q. Is Colonel Fikus a friend  
23 of yours? By that I mean, what I  
24 mean is, I know that both of you are  
25 professionals. But, you know, there

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1 there, yes.

2 Q. No, no, no, emergency  
3 need. Wasn't there an emergency  
4 need for him out there, Colonel?

5 A. Well, I don't know if you  
6 want to call that --- is that your  
7 terminology? I ---.

8 Q. Yeah, my question is,  
9 wasn't there an emergency need?

10 A. Well, you ---.

11 Q. If there was not an  
12 emergency need, qualify the word  
13 need for me, if you will. Respond  
14 any way you can.

15 A. Well, I'm not sure  
16 emergency is the correct  
17 terminology. If you want to use  
18 that, that's fine, but the ---.

19 Q. No, I'm not using it ---  
20 sir, is it fair to say there was no  
21 emergency need now?

22 A. The convention was a  
23 number of months away.

24 Q. A number of months away?

25 A. Yeah, absolutely.

1 Q. How much notice was he  
2 given about being transferred?

3 A. I don't know the answer to  
4 that.

5 Q. You don't know the answer  
6 to that?

7 A. No.

8 Q. You don't know when he was  
9 told to report or when it happened?

10 A. No, I don't. Again, it  
11 wasn't in my area of responsibility.

12 Q. You know he went to Court?

13 A. I've been told that, yes.

14 Q. And the transfer took  
15 place?

16 A. I've been told that.

17 ATTORNEY REYNOLDS:

18 Objection. That is a  
19 mischaracterization. I've  
20 heard this before in these  
21 depositions. The Court  
22 did not agree with him.  
23 The Commonwealth settled  
24 his case before it went to  
25 a preliminary injunction

1                   hearing. We ultimately  
2                   won that investigation.  
3                   The Court did not  
4                   intervene in that. We  
5                   settled that injunction.  
6                   The Court did not  
7                   intervene.

8           BY ATTORNEY BAILEY:

9           Q.           Did you learn at some  
10           point the Commissioner backed off  
11           and backed away and Mr. Ober did not  
12           go to Washington --- at least in  
13           Mr. Ober's perspective, he didn't go  
14           to Washington?

15          A.           He didn't go to  
16           Washington.

17          Q.           No, he did not. He stayed  
18           in Harrisburg with his family;  
19           didn't he?

20          A.           Yes, he did.

21          Q.           Did you ever read Judge  
22           Peleggrini's opinion?

23          A.           No, I did not.

24          Q.           All right. Now, do you  
25           remember when it was that you made

1 this recommendation to the  
2 Commissioner that Mr. Ober would be  
3 --- I guess would have his career  
4 enhanced by going to Washington?

5 A. When that was?

6 Q. Well, would he have his  
7 career enhanced by going to  
8 Washington?

9 A. In my opinion, yeah, it  
10 would have been a pretty good  
11 thing. I'm not sure and I don't  
12 know specifically what Captain  
13 Ober's background in the department  
14 is, but I'm not sure he's had a lot  
15 of operational assignments and he  
16 certainly would have been working  
17 directly under a very, very good  
18 commander, from a planning and an  
19 operational perspective. It would  
20 have been good.

21 Q. Well, who was that area  
22 commander?

23 A. Major Supinka.

24 Q. Well, you talked with him  
25 about meeting Mr. Ober out there;

1 didn't you?

2 A. No.

3 Q. Or somebody like him?

4 A. I did, yes.

5 Q. Yeah. And he told you how  
6 badly he needed him, right?

7 A. Well, he was reluctant.  
8 He did not have benefit of the  
9 knowledge that I had at that point.  
10 He had not gone to San Diego and he  
11 was not told that that was --- as it  
12 turns out, I think he would now  
13 agree that it was important.

14 Q. Okay. But the question  
15 --- okay.

16 A. But at that time I told  
17 him, in fact, yeah, I told him that  
18 Captain Ober would be coming out and  
19 I probably would have given him an  
20 effective date, because he probably  
21 would have asked me that so I would  
22 have --- I don't recall what it was.

23 Q. He knew what to do with  
24 Ober, right?

25 A. Yes.

1 Q. He put him right to work  
2 on this task. If there wasn't an  
3 emergency, there was an immediate  
4 need for Mr. Ober out there?

5 A. I can tell you that he  
6 would have been put to work  
7 immediately.

8 Q. Yeah. Doing what?

9 A. Had he gotten ---.

10 Q. Doing what?

11 A. Any number of duties for  
12 as far as getting ready for the  
13 National Governor's Association  
14 meeting. You have to understand  
15 that's pretty massive. That's a  
16 pretty massive thing. It involved  
17 over 500 Troopers, so to be assigned  
18 to that --- there was an awful lot  
19 of work to do. There was an awful  
20 lot of coordinating to do between  
21 area commands, in between troop  
22 commands.

23 Q. Well, wouldn't you bring  
24 him in to brief him on that?

25 A. It would not have been

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1 ----.

2 Q. Wouldn't you say, Mr. Ober

3 ---?

4 A. It would not have been my  
5 responsibility to do that.

6 Q. Wouldn't you at least say,  
7 gee, I have a great idea for you,  
8 you know, go out here to Washington,  
9 this is a career enhancing move, et  
10 cetera, et cetera. No discussion or  
11 anything like that. You went to the  
12 Commissioner with that, so do you  
13 know whether the Commissioner had  
14 any meetings with Mr. Ober to  
15 discuss that?

16 A. I do not know.

17 Q. Now, are there any  
18 regulations that would govern that  
19 transfer?

20 A. I would expect it would be  
21 a general transfer, you know, at the  
22 direction of the Commissioner.

23 Q. Well, Mr. Ober didn't  
24 request it, right?

25 A. I don't believe so.

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1 Q. And once he objected to  
2 it, his --- his --- he was consulted  
3 or his wishes were respected or  
4 whatever, right?

5 A. That's correct. He stayed  
6 in the Harrisburg area.

7 Q. Yeah.

8 A. He did not go to Troop B  
9 Washington.

10 Q. That didn't have anything  
11 to do with the --- any grievances or  
12 any legal ---?

13 A. About what didn't have  
14 anything to do with it?

15 Q. His staying in the  
16 Harrisburg area didn't have anything  
17 to do with the legal process, do you  
18 know or didn't ---?

19 A. I don't know.

20 Q. You didn't follow that?

21 A. I didn't follow that.

22 Q. Or you weren't involved in  
23 that?

24 A. I didn't.

25 Q. Was his transfer in

1 relation to a promotion of any kind?

2 A. No, he was a Captain  
3 already and that assignment out  
4 there would have been naturally a  
5 Captain's position.

6 Q. Would have been for a  
7 Captain?

8 A. Uh-huh (yes).

9 Q. It wasn't an emergency or  
10 hardship, right? You already told  
11 us it wasn't an emergency?

12 A. Oh, it's not an  
13 emergency. There were still a  
14 number of months.

15 Q. Do you know of a hardship  
16 situation, I'm sorry?

17 A. There were still a number  
18 of months to the meeting.

19 Q. Yeah.

20 A. I don't call that an  
21 emergency. An emergency would mean  
22 a number of days.

23 Q. In fact, Mr. Young went  
24 out there?

25 A. Captain Young went out

1       there.

2       Q.               How did he happen to go  
3       out there?

4       A.               Again, he was a good --- a  
5       good guy and spent a lot of his  
6       career in bureaus, not so much field  
7       time. It was a right fit for him as  
8       well, he could get out there and  
9       again help out a pretty good area  
10      commander and learn from him.

11     Q.               Well, how do you know Mr.  
12     Young?

13     A.               I've known --- I've known  
14     Captain Young for years.

15     Q.               Now, was he a Lieutenant,  
16     right?

17     A.               I don't know. Could be.  
18     I don't know. He's a Captain now.

19     Q.               Did he get a promotion for  
20     going out there or anything? Does  
21     that have anything to do ---?

22     A.               Well, we couldn't give  
23     somebody a promotion because they  
24     went out to Troop B Washington, no.

25     Q.               You said it called for a

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1 Captain, though, do you remember?

2 A. It was a Captain in  
3 eastern Pennsylvania. I would  
4 expect it to be a Captain there.

5 Q. It didn't call for a  
6 Captain?

7 A. There's no TO involved.

8 Q. It's not part of your  
9 organizational?

10 A. No.

11 Q. Structure?

12 A. No.

13 Q. So then Mr. Young,  
14 Lieutenant Young did not see ---  
15 receive a promotion in exchange for  
16 his assignment, huh?

17 A. Oh, I'd be very  
18 surprised. It's not my job to  
19 promote people, but you don't  
20 promote people for those kinds of  
21 reasons.

22 Q. Well, Mr. Young wasn't  
23 ordered to take that position, was  
24 he, out there?

25 A. I don't know.

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1 Q. Was he consulted before he  
2 was sent out?

3 A. I do not know, I'm sorry.  
4 I did not talk to him.

5 Q. Who did?

6 A. I don't know.

7 Q. Do you know if the  
8 Commissioner did?

9 A. I don't know. I mean, I  
10 just don't know.

11 Q. You didn't deal with it?  
12 You don't know what happened with  
13 Mr. Young, right?

14 A. I don't know how it  
15 happened that he was told to go out  
16 there. I don't know who told him.  
17 Ordinarily I would expect I would  
18 have, because was he in my area of  
19 responsibility but I don't recall  
20 doing it.

21 Q. Did somebody violate the  
22 chain of command?

23 A. I don't know. I'll tell  
24 you ---.

25 Q. If they did, what should

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1 we do?

2 A. I'll tell you I hollered  
3 at some people already for doing  
4 that in my career.

5 Q. What should we do if they  
6 did?

7 A. I don't know what's your  
8 situation.

9 Q. I know if my kids do  
10 something wrong I tell them let's  
11 tar them and feather them and run  
12 them out on a rail?

13 A. That works pretty good.

14 Q. So you weren't involved in  
15 the Young thing but he was in your  
16 area of operations?

17 A. I say I don't remember  
18 doing that.

19 Q. You don't remember?

20 A. I expect I would have, but  
21 I just don't remember doing it  
22 unless I was off or something at the  
23 time.

24 Q. What's IIMS? What is  
25 that?

1 A. What is that?

2 Investigative information management  
3 system.

4 Q. What is IIMS? Yeah, I  
5 think something like that. What ---  
6 you know, it's --- can you tell me  
7 about that, what that is?

8 A. Don't know too much about  
9 it, other than it is a --- it's a  
10 very important aspect of the  
11 department now. It's the  
12 computerization of the entire  
13 department working on that. More  
14 specifically than that I couldn't  
15 ask --- couldn't answer.

16 Q. It's a very important  
17 thing having to do with  
18 relationships between police  
19 departments and information and  
20 credibility and all that kind of  
21 stuff or what?

22 A. Oh, I'm sure part of that,  
23 part and parcel, I would think.

24 Q. Yeah. Well, what was Ober  
25 doing when he was --- when the

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1 Commissioner decided that he should  
2 go to Washington? What was he  
3 doing, took your advice and sent him  
4 to Washington?

5 A. I don't know that. It was  
6 my understanding that at the time he  
7 was in between jobs. Okay? In  
8 between IIMS and BPR but I don't  
9 know that. There's other people you  
10 could ask who would be more  
11 definitive.

12 Q. Okay. What position was  
13 he going to be assigned once the  
14 National Governor's Association  
15 conference or whatever was over,  
16 what was he going to be doing after  
17 that?

18 A. I don't know. I don't  
19 know.

20 Q. Well, did anybody --- you  
21 don't know if anyone discussed with  
22 him what he was going to be doing or  
23 what his future was going to be?

24 A. I don't know. I do not.  
25 Again it was not in my area of

1 responsibility so I would not  
2 necessarily have those kinds of  
3 conversations.

4 Q. Does Major Conley ever  
5 talk to you about a desire to have  
6 Ober removed from IA, internal  
7 affairs?

8 A. No, he did not and would  
9 not.

10 Q. Do you know what Mr.  
11 Young's schedule was before he went  
12 out there?

13 A. How do you recall?

14 Q. What was he doing, what  
15 his assignment was or anything like  
16 that?

17 A. He was probably assigned  
18 to bureau of criminal investigation,  
19 organized crime division, my guess.

20 Q. Where's Mr. Young from?

21 A. He is from the outskirts  
22 of Philadelphia.

23 Q. What's he doing now?

24 A. He's still at BCI, is my  
25 understanding.

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1 Q. And what's BCI stand for?  
2 What's that acronym for?

3 A. Bureau of criminal  
4 investigation, I'm sorry.

5 Q. Okay. Now, is he --- did  
6 he go to the FBI Academy, do you  
7 know, Mr. Young?

8 A. I think he did.

9 Q. So he left the PA State  
10 Police?

11 A. No, no, no, no, no. He's  
12 still a member. He went down to the  
13 National Academy.

14 Q. For training?

15 A. Which is training, that's  
16 correct. The FBI gives training to  
17 other agencies.

18 Q. Okay. Do you know if  
19 Young was assigned any duties with  
20 the Republican National Committee or  
21 with the convention or anything?

22 A. I don't know. See, I was  
23 gone. I was retired by that time,  
24 so I don't know.

25 Q. Do you know whether he

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1 picked up \$50 worth of overtime in  
2 working for the RNC in five days?

3 Do you know whether that happened?

4 A. I was retired. I have no  
5 idea.

6 Q. Okay. All right.

7 Supinka, did he request anyone else  
8 other than --- well, we know he  
9 didn't request ---?

10 A. He didn't request  
11 anybody.

12 Q. He didn't request  
13 anybody. Did you give him --- did  
14 the Colonel or yourself or anybody  
15 else give him anybody else in  
16 addition to Ober and then Young?

17 A. Oh, I don't think so. Not  
18 while I was there, anyway.

19 Q. Young wasn't --- again,  
20 please don't --- don't feel insulted  
21 by my question.

22 A. Uh-huh (yes).

23 Q. But Mr. Young wasn't  
24 chosen in order to make it look like  
25 there was a reason to send Ober out

1 to Washington, was there?

2 A. No, there was a need for a  
3 person out there. There was a need  
4 for somebody to be in that  
5 position.

6 Q. There was a need. But  
7 that wasn't communicated, that came  
8 out of your experience out there in  
9 San Diego and it was based on your  
10 knowledge, your own knowledge, of  
11 the needs out there in the southwest  
12 with what was coming up in  
13 Pittsburgh, National Governor's  
14 Association, but it wasn't Supinka  
15 asked --- Supinka --- Supinka asking  
16 you for information or asking you  
17 for help; right?

18 A. No, he did not.

19 Q. He did not.

20 A. Yeah, that was my  
21 initiative.

22 Q. I don't mean to  
23 mispronounce his name, by the way.  
24 I apologize.

25 A. Uh-huh (yes).

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1 Q. And then Captain Transhue  
2 (phonetic) was sent down to  
3 Philadelphia, right?

4 A. That's my understanding,  
5 yes.

6 Q. Were you responsible for  
7 that?

8 A. That would have --- let me  
9 just think about that. That  
10 probably was a request, not  
11 probably, I'm sure it was a request  
12 from Major Wertz. I would expect  
13 that request to have been after we  
14 came back from San Diego. Though  
15 I'm not sure.

16 Q. That was a request from  
17 Mr. Wertz?

18 A. Yes. He was in San Diego  
19 with me.

20 Q. All right. He is a friend  
21 of Transhue, isn't he?

22 A. Yeah, they served in the  
23 same area command, troop commands  
24 already together so they knew each  
25 other.

1 Q. Why did he make that  
2 request?

3 A. But I think at the time  
4 she was assigned to R & D, or  
5 something at the time.

6 Q. R & D?

7 A. Yeah. So again it would  
8 not have been --- I wouldn't  
9 necessarily have made a  
10 recommendation, you know, because  
11 it's not in my area of  
12 responsibility.

13 Q. You know, that's ---?

14 A. Fikus would have had to  
15 deal with that, okay.

16 Q. Who did you complain to  
17 about Young, you being bypassed in  
18 the case of Young? I mean, you were  
19 upset about that, right?

20 A. I'm sorry. About what?

21 Q. That Young was assigned  
22 without your knowledge?

23 A. I'm not sure Young was  
24 assigned without my knowledge, no.

25 Q. Who were you concerned

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1 about that your chain of command was  
2 bypassed?

3 A. I never was.

4 Q. Well, you and I were  
5 talking about some of these  
6 assignments that got by you or got  
7 around you?

8 A. I don't ---.

9 ATTORNEY REYNOLDS:

10 I would just note for  
11 the record that I think  
12 you brought up that issue  
13 not Colonel Westcott.

14 ATTORNEY BAILEY:

15 Lieutenant Colonel  
16 Westcott.

17 ATTORNEY REYNOLDS:

18 Lieutenant Colonel  
19 Westcott. What did I  
20 say?

21 ATTORNEY BAILEY:

22 You said Lieutenant.  
23 That's okay. It's been a  
24 long day.

25 ATTORNEY REYNOLDS:

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1 My understanding of  
2 that exchange, he said if  
3 there was a violation of  
4 chain of command then  
5 something might have to be  
6 done, but he didn't  
7 acknowledge that there  
8 was, in fact, a violation  
9 of command.

10 ATTORNEY BAILEY:

11 Well, let's ---.

12 ATTORNEY REYNOLDS:

13 I think that was more  
14 your comment.

15 ATTORNEY BAILEY:

16 Let's revisit that,  
17 because I may have  
18 misunderstood you.

19 A. All right.

20 BY ATTORNEY BAILEY:

21 Q. Didn't you indicate that  
22 you did not send Mr. Young out to  
23 Washington?

24 A. I don't recall me  
25 personally telling him, but I would

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1 --- you know, I very well could  
2 have. It would have been in my  
3 place to do. I just don't recall  
4 doing it. The Commissioner may have  
5 done it also.

6 Q. Well, did you complain to  
7 anybody about that happening without  
8 your knowledge?

9 A. No. No, I'm not sure it  
10 was done without my knowledge. I'm  
11 sure I knew he was going out there.  
12 Whether I told him he was going out  
13 there or whether the Commissioner  
14 told him I just don't recall.

15 Q. I did misunderstand then.  
16 We need to clear this up on the  
17 record, because I want that to be  
18 clear on the record. You had made  
19 an error on the record and counsel  
20 made an objection and --- by myself  
21 not you by myself, I made an error  
22 here and I want to clear it up. You  
23 had made a recommendation by the  
24 Colonel about sending Mr. Ober out  
25 to Washington. Right?

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1 A. Yes.

2 Q. You learned after the fact  
3 that Mr. Young was sent ---?

4 A. No, I probably also would  
5 have made ---.

6 Q. Not probably, do you know?

7 A. No, listen.

8 Q. Yeah.

9 A. I'm trying to clarify so  
10 that you're not confused.

11 Q. Right.

12 A. When I heard --- learned  
13 that Captain Ober was not going out  
14 there, but somebody else needed to  
15 go out there because I had a need  
16 for somebody out there, I would have  
17 ---.

18 Q. Yeah. You didn't learn it  
19 from somebody. You knew ---?

20 A. I would have recommended  
21 Captain Young go out there. I would  
22 have recommended that to the  
23 Commissioner.

24 Q. Sir, you would have. The  
25 fact is you don't know if you did.

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1 A. I'm sure I did.

2 Q. Oh, you are? You're sure  
3 that you did?

4 A. I'm sure. I'm sure the  
5 Commissioner would have conversed  
6 with me about that. Well, you know,  
7 who should we send out there? Who  
8 would you like to go out there? And  
9 I'm sure I would have given him the  
10 answer.

11 Q. All right, sir.

12 A. Can I remember that  
13 specifically? No, I cannot.

14 Q. Let's look at this now.  
15 You had no request coming up through  
16 channels asking to have somebody go  
17 out to Washington?

18 A. That's correct.

19 Q. You originated this idea  
20 because of your concern about and  
21 your respect for Captain Ober and  
22 your perceived need to have somebody  
23 out there for those purposes to  
24 help.

25 A. That's one thing, my

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1 perceived need.

2 Q. Yes.

3 A. Not whatever Captain Ober  
4 was involved with or was not  
5 involved with, okay.

6 Q. No, you said ---?

7 A. That just happened to be  
8 the circumstances at the time.

9 Q. Why did you pick him?

10 A. I had a need --- because  
11 he was available.

12 Q. Yeah.

13 A. Okay.

14 Q. Oh, okay. Well, how did  
15 you know he was available?

16 A. I was told he was  
17 available.

18 Q. Who did you ask?

19 A. Probably the  
20 Commissioner. I don't know. The  
21 Commissioner or Colonel Fikus.

22 Q. Okay.

23 A. Somebody told me that.

24 Q. Okay. And you had this  
25 --- because of your California

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1 experiences, you had this perceived  
2 need that, although you didn't check  
3 with him, that the area commander  
4 out there had a need for somebody  
5 for the National Governor's  
6 Conference; right?

7 A. That's correct.

8 Q. All right. Now,  
9 obviously, Mr. Ober's re ---  
10 actually --- well, the decision to  
11 send him out to Washington was made  
12 by the Commissioner not you?

13 A. That's the Commissioner's  
14 decision, correct.

15 Q. That's the Commissioner's  
16 decision and that would be normal.  
17 I assume that's normal thing?

18 A. That's normal.

19 Q. You don't know whether he  
20 talked to Mr. Ober or not but you  
21 know you didn't?

22 A. I do not.

23 Q. You don't know whether he  
24 did?

25 A. I do not know.

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1 Q. All right. He --- just a  
2 second here. Okay. You did not ---  
3 you didn't speak to him again and  
4 you don't know whether the Colonel  
5 did. But he reacted rather quickly  
6 to the news that he was going to  
7 Washington. Right?

8 A. I ---.

9 ATTORNEY REYNOLDS:  
10 Who's he? Is this  
11 Dave Young?

12 A. Yeah.

13 ATTORNEY BAILEY:  
14 Mr. Ober.

15 ATTORNEY REYNOLDS:  
16 Okay. This is  
17 Mr. Ober you're talking  
18 about.

19 BY ATTORNEY BAILEY:

20 Q. Mr. Ober reacted rather  
21 quickly that he was going to  
22 Washington?

23 A. I presume so. He didn't  
24 talk to me at all.

25 Q. When did you first learn

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1 that he was going to Washington? I  
2 mean, how much time after when you  
3 told the Commissioner about the need  
4 for him out there and I assume you  
5 learned that the Commissioner was  
6 sending him out there, right?

7 A. Uh-huh (yes).

8 Q. Because he was in your  
9 operational chain of command; right?

10 A. Who was?

11 Q. Mr. Ober?

12 A. No, he was not.

13 Q. Oh, he wasn't?

14 A. No. See.

15 Q. That may be where the  
16 misunderstanding comes. Mr. Young,  
17 see, Mr. Young was within your  
18 operation?

19 A. Mr. Young was, that's  
20 correct.

21 Q. Yeah. And you don't  
22 remember whether you recommended him  
23 or not, but you know that you  
24 recommended Mr. Ober but Mr. Ober is  
25 not in your chain of command.

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1 That's probably where I got  
2 confused?

3 A. That's correct.

4 Q. Yeah.

5 A. Yeah.

6 Q. All right. That will  
7 help. Now, did you ever discuss  
8 with Mr. Young before or after the  
9 fact his going to Washington?

10 A. Did I ever discuss that  
11 with him?

12 Q. Yeah.

13 A. I don't know. I probably  
14 --- I could have.

15 Q. Okay.

16 A. I could have.

17 Q. Did you know he was  
18 available to go out there or was he  
19 available?

20 A. I'm sure he was available,  
21 but it --- I mean, he had an  
22 assignment.

23 Q. Yeah.

24 A. Okay. We would have just  
25 borrowed him from that assignment

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1 and gave him another thing,  
2 something else to do.

3 Q. You would have detached  
4 him?

5 A. That's correct. But I'm  
6 not sure that's the correct  
7 terminology but ---.

8 Q. May not be the right  
9 word. May not be the right word but  
10 Mr. Ober was available. He was  
11 floating around?

12 A. It was my information that  
13 he was like in between jobs. He was  
14 available.

15 Q. Okay. Well, you sent Ober  
16 over to BCE, right? Is that your  
17 decision?

18 A. I didn't send him --- I  
19 didn't send him anywhere.

20 Q. You didn't send him  
21 anywhere?

22 A. The Commissioner did that.

23 Q. Who sent him to BCE?

24 A. The Commissioner did  
25 that.

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1 Q. The Commissioner did that?

2 A. It's the same thing. It's  
3 his job to do those transfers  
4 normally.

5 Q. He does them based upon  
6 advice, right?

7 A. That's correct.

8 Q. And who advised that the  
9 Commissioner send Mr. Ober to LCE?

10 A. I --- I very well could  
11 have done that.

12 Q. But you don't know, do  
13 you?

14 A. I'm not sure whether I  
15 would have done that or Colonel  
16 Coury made that recommendation or  
17 even Colonel Fikus. I don't know.  
18 I don't know that but I could have.

19 Q. But you could have.

20 A. Uh-huh (yes).

21 Q. Why --- was that a career  
22 enhancing move, send him to LCE?

23 A. Well, again, it's my  
24 understanding that he was he was no  
25 longer going to Troop B Washington

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1 and that he had to be put into a  
2 Harrisburg assignment and I think  
3 that was the about the only thing  
4 available out there at that time.  
5 That was my recollection that was  
6 the only thing available.

7 Q. Well, you described him  
8 before as an exceptionally fine  
9 officer, haven't you, or am I wrong?

10 A. I think he has very good  
11 administrative skills. His  
12 investigative skills could be  
13 honed some. I think there's some  
14 lacking there, but the guy's got  
15 some great administrative skills.

16 Q. Who's Sergeant Valensic  
17 (phonetic)?

18 A. He's a Sergeant in liquor  
19 --- or he was a Sergeant in liquor  
20 control.

21 Q. What he did he do at the  
22 time you were recommending or  
23 somebody was --- I don't mean you  
24 now, but somebody was recommending  
25 because you don't have any specific

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1 recollection of recommending  
2 Mr. Ober for LCE, right? So ---?

3 A. I don't have that  
4 recollection but I could have.

5 Q. You could have?

6 A. I could have during  
7 discussions, yeah.

8 Q. Yeah. But Mr. Valensic  
9 was out there at BCE, right, or at  
10 LCE, rather?

11 A. LCE.

12 Q. He was out there?

13 A. I believe so.

14 Q. Where did he go? Did he  
15 leave or retire or ---?

16 A. No. I think --- although  
17 I've been retired for a year and a  
18 half now, but when I retired he was  
19 still there.

20 Q. Was he promoted?

21 A. He was a Sergeant there.

22 Q. Right.

23 A. Which would have made him  
24 probable --- and I'm guessing  
25 without looking at personnel

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1 rosters, but a Sergeant at LCE is  
2 generally an office supervisor.

3 Q. Okay.

4 A. And I think he might have  
5 been filling in. I think we had a  
6 Lieutenant vacancy there so maybe he  
7 was an acting. I don't know that,  
8 but Valensic I'm guessing that he  
9 was a Sergeant and he would have  
10 been as an office supervisor.

11 Q. Well, the position that  
12 Mr. Ober was put into, that was a  
13 Captain's position, wasn't it?

14 A. What position was he put  
15 into?

16 Q. Geez, I don't know. Do  
17 you remember? I mean, I mean that  
18 sincerely. I don't know. I don't  
19 remember.

20 A. I don't know. Let me  
21 think. No, I don't know if there  
22 was a Captain's position there. My  
23 guess is, is that --- and I'm  
24 speculating without looking at  
25 paperwork. My guess is that --- I

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1 think we have a Lieutenant out there  
2 that left. And there was a  
3 Lieutenant vacancy. And the  
4 Lieutenant out there is a section  
5 commander, and three sections out  
6 there. And I believe Captain Ober  
7 would have gone into one of those  
8 section commander positions.

9 Q. A Lieutenant's position?

10 A. That would be my  
11 understanding, yes.

12 Q. That was career enhancing,  
13 wasn't it?

14 A. It was a Harrisburg  
15 assignment.

16 Q. That's --- is Harrisburg a  
17 career enhancing? I mean, do you  
18 geographic --- is there geographic  
19 prejudice in the system?

20 A. No.

21 Q. It's a Harrisburg  
22 position, true?

23 A. That's where he --- that's  
24 what we were required to do.

25 Q. Pardon me?

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1 A. That's what we were  
2 required to do.

3 Q. Oh, okay. Well, did  
4 Castlenick (phonetic) insist that  
5 the position be filled?

6 A. No, I don't know if he  
7 did.

8 Q. Okay. All right.

9 A. I mean, all commanders are  
10 anxious to get their vacancies  
11 filled, but I don't know if we had  
12 any conversation around that time  
13 for that.

14 Q. All right. How about  
15 Lieutenant Williams? Remember  
16 Lieutenant Williams who was  
17 transferred to the bureau of patrol,  
18 August 31, 1999? Does that mean  
19 anything to you?

20 A. Would he have been the one  
21 that transferred out that Captain  
22 Ober took his spot.

23 Q. Well, there's some issue  
24 here, I have a fact list here that  
25 he was arrested for something?

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1 A. I don't know that.

2 Q. And it was his position in  
3 19 --- in January 29 --- I'm just  
4 curious. Let me ask you this just  
5 --- how many Lieutenants do you  
6 have in the Pennsylvania State  
7 Police?

8 A. I don't know. Probably  
9 around a hundred.

10 Q. A hundred. Well, did you  
11 promote or look at the promotion  
12 list for getting somebody in that  
13 LCE position who was a Lieutenant  
14 and promote somebody into the  
15 Lieutenant's position in there?

16 A. At some point I suppose we  
17 would have. The Commissioner  
18 decides when he wants to make  
19 promotions. So when he wants to do  
20 that he asks for recommendations. I  
21 would have looked the list over at  
22 that point.

23 Q. So you take Ober and put  
24 him out there?

25 A. Not me.

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1 Q. Not you. I'm sorry. It  
2 wasn't you. Have you ever served in  
3 a Lieutenant's position while you  
4 were a Captain or above?

5 A. I did not.

6 Q. Do you know anybody else  
7 besides Mr. Ober that has?

8 A. I don't know.

9 Q. How many years have you  
10 been in the Pennsylvania State  
11 Police?

12 A. Thirty-one (31).

13 Q. Before you retired, 31  
14 years. Have you ever been  
15 supervised anybody equal to you or  
16 below you in rank?

17 A. I have.

18 Q. Tell me the  
19 circumstances.

20 A. I was assigned as a  
21 Trooper to a white collar crime unit  
22 in eastern Pennsylvania. The  
23 supervisor in that unit was a  
24 Corporal. I was promoted to  
25 Corporal and was assigned to stay

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1 with that unit. So there was two  
2 Corporals there. He was the boss.  
3 I was investigator.

4 Q. Now, you wouldn't --- is  
5 that a standard TO and E position,  
6 standard table organization and  
7 equipment position?

8 A. No, it happens sometimes  
9 in bureaus in specialized positions.

10 Q. That's not comparable to  
11 the situation that Captain Ober is  
12 in, is it?

13 A. Probably not, no.

14 Q. Okay. Now, you've already  
15 answered a question I had for you.  
16 Section commanders typically are  
17 Lieutenants, am I correct?

18 A. In LCE, that's correct.  
19 And in troop commands, that's  
20 correct as well.

21 Q. Are you familiar with the  
22 regulation AR 1-11?

23 A. What's that pertain to?

24 Q. Assigning Captains to a  
25 section commander's position.

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1 A. No, I'm not.

2 Q. Did the Commissioner tell  
3 you that he was going to assign Ober  
4 to LCE?

5 A. I don't recall. I'm sure  
6 he did.

7 Q. Did you learn, did you  
8 learn of it before Mr. Ober was  
9 assigned to the LCE position or  
10 after he had been assigned there?

11 A. I --- I don't --- I'm sure  
12 it was before, because we would have  
13 had conversations. He was pulling  
14 in somebody on the operation side of  
15 the department, though, I can't  
16 recall a conversation it would have  
17 just been standard procedure that he  
18 would have let me know. It would  
19 have been standard procedure. I  
20 even would have had some input into  
21 it.

22 Q. Thirty-one (31) years' of  
23 experience. How long were you ---  
24 was it from 1995 you were in charge  
25 of the operational ---

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- 1 A. That's correct.
- 2 Q. --- division of the State
- 3 Police? Give me another situation
- 4 like Ober's.
- 5 A. How do you mean like
- 6 that?
- 7 Q. Sure. I want a Captain
- 8 assigned to a section position out
- 9 there. Give me another situation.
- 10 A. I don't --- I don't know
- 11 of any.
- 12 Q. You don't know of any.
- 13 A. No.
- 14 Q. I want to change a little
- 15 bit and ask you some questions about
- 16 PEMA.
- 17 A. All right.
- 18 Q. Okay. First of all, very,
- 19 very quickly so that anybody's who's
- 20 not familiar reading the record
- 21 would know what the Pennsylvania
- 22 emergency management, what is it,
- 23 association, agency? I'm sorry.
- 24 A. Agency.
- 25 Q. What it is?

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1 A. That's a separate agency  
2 within state government and it has  
3 to do --- well, it's emergency  
4 management agency.

5 Q. Uh-huh (yes).

6 A. Uh-huh (yes).

7 Q. Is it the Lieutenant  
8 Governor who's in charge of that?

9 A. That's correct.

10 Q. Ultimately the head guy?

11 A. That's correct.

12 Q. And what role does the  
13 Pennsylvania State Police play with  
14 PEMA?

15 A. Certainly as an agency we  
16 maintain liaison with them, but we  
17 do have what they call an emergency  
18 cell that we man at the  
19 PEMA building. PEMA is,  
20 quote/unquote, activated and the  
21 cells are manned and we man our  
22 cell.

23 Q. What position did Ober  
24 play with PEMA?

25 A. I don't know that.

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1 Q. Any role at all?

2 A. I don't know that. I  
3 don't know if he was ever assigned  
4 to PEMA or not.

5 Q. Did PEMA come under your  
6 command?

7 A. Yes. Yes. Because it  
8 came under bureau of emergency and  
9 special operations. That came under  
10 my area of command.

11 Q. How do people become ---  
12 how do Pennsylvania State Police  
13 officers of any rank become assigned  
14 to PEMA?

15 A. That's done by BESO.  
16 Bureau of emergency and special  
17 operations.

18 Q. Do they come under you  
19 operationally?

20 A. Yes.

21 Q. So you're telling me that  
22 somebody could just be assigned to  
23 PEMA without your knowledge?

24 A. By all means.

25 Q. Oh, they can be?

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1 A. Well --- well, yeah.

2 Q. Okay.

3 A. I mean.

4 Q. I don't know how. Just

5 tell me how.

6 A. Let me just clarify this,

7 okay?

8 Q. Yeah, right.

9 A. Initially, BESO, PEMA, the

10 emergency management thing, did not

11 come under the responsibility of the

12 Deputy Commissioner of operations.

13 That changed probably halfway

14 through my tenure when Colonel

15 March retired. That came under his

16 area. So I would not necessarily

17 have any knowledge as to who

18 actually was on, who manned those

19 cells, specific information as to

20 who manned those cells during that

21 time when Colonel March was there,

22 and, in fact, really not --- not

23 really while I was there other than

24 Captain Davis from BESO. I mean, it

25 just --- I had no need to know

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1 that. That's all. That's like I  
2 don't know who is assigned to every  
3 station. I don't know who is  
4 assigned to every LCE office. I  
5 just don't know.

6 Q. You know, there's no use  
7 in my wasting your time with  
8 questions if you have no knowledge  
9 of Captain Ober ever being part of  
10 any PEMA team or having any  
11 PEMA assignment, is there?

12 A. No, I don't know if he  
13 did. He may have. I just don't  
14 know.

15 Q. Well, let's make sure the  
16 record is clear and wrap it up and  
17 save us a lot of time here. You as  
18 you sit here today have no  
19 recollection of Captain Ober ever  
20 being a member of any --- ever  
21 having a PEMA assignment?

22 A. You know, I don't know.  
23 The only thing I can to clarify  
24 things, is I can say that I think he  
25 wanted to go, had applied for a

1 position at PEMA, is my  
2 understanding.

3 Q. Where did you get that  
4 understanding?

5 A. I'm not sure.

6 Q. Did you ever talk to  
7 Castlenick about it?

8 A. And it might have been.  
9 It might have been BESO. I don't  
10 know. I just don't know. I just  
11 don't know. And I don't know  
12 whether Captain Ober ever had a  
13 position there. He very well could  
14 have. I just don't know. I don't  
15 know whether it was or whether he  
16 was just applying to become part of  
17 the PEMA cell. I don't know.

18 Q. Well, I have a note here.  
19 Can I read it to you?

20 A. Please.

21 Q. After serving on PEMA for  
22 over five years on March 10, 2000,  
23 just one day after a newspaper  
24 article appeared in the local paper,  
25 Harrisburg down here, that discussed

1 Ober's defeat of the Washington  
2 transfer, Ober was removed from the  
3 PEMA position. Do you know anything  
4 about that?

5 A. No, I didn't ---.

6 Q. How or why or what for or  
7 anything about it?

8 A. No, I do not. I'm sorry.  
9 I do not. In fact, I couldn't have  
10 told --- I wouldn't --- I can't  
11 argue the fact that he was or was  
12 not there. I just don't know. I  
13 have no knowledge.

14 Q. All right, sir. If you  
15 --- that's a --- provided it's an  
16 honest thorough answer and I'm not  
17 questioning you then I ---.

18 A. I mean, if you have some  
19 other information we can clarify it,  
20 but I could not sit here and tell  
21 you that I knew that Darrell Ober  
22 was there for five years.

23 Q. Well, if somebody wanted  
24 to serve on PEMA, would you turn ---  
25 is this a sought-after position?

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1 A. I don't know that.

2 Q. You don't --- apparently  
3 you didn't pay much attention to  
4 PEMA. I mean, don't take that  
5 wrong. You're a very busy man with  
6 tremendous responsibilities and I  
7 understand that, so I don't mean  
8 that in a negative way.

9 A. Uh-huh (yes).

10 Q. But it's just not the kind  
11 of thing you had time to spend much  
12 time on apparently?

13 A. No, my involvement there  
14 was pretty much --- BESO pretty much  
15 took care of that, okay.

16 Q. Who's in charge of BESO?

17 A. Well, there's a Major  
18 there.

19 Q. Who's that?

20 A. At the time, it was Major  
21 Washington.

22 Q. Major Washington?

23 A. Right.

24 Q. Oh.

25 A. The only involvement I had

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1 really was if --- if the --- if an  
2 emergency had occurred, okay, and  
3 the PEMA cell was activated, the  
4 commander at the PEMA cell would  
5 call me and tell me that they were  
6 activated and let me know what the  
7 situation was and what was being  
8 done. It was strictly an advisory  
9 thing. But I --- see, I don't know  
10 if anything ever came across my desk  
11 asking permission to assign someone  
12 to PEMA. I don't know if I've ever  
13 seen anything like that.

14 Q. Five years, Ober served on  
15 PEMA under you. You're aware of ---  
16 you have no recollection of him,  
17 just none. Just none?

18 A. No, first of all, it  
19 wasn't five years so don't misread  
20 that in. It was just probably a  
21 year and a half, after George March,  
22 Colonel March, retired that that  
23 would have come under me.

24 Q. How long ago was that?

25 A. But let me tell you

1 something, there are Troopers around  
2 that had assignments for 25 years  
3 that I never knew had that  
4 assignment.

5 Q. Yeah.

6 A. And that comes under my  
7 area of command. I just didn't have  
8 any knowledge of it. That's all.

9 Q. Did Ober ever approach you  
10 or express any interest to you about  
11 PEMA, write you a letter, any memo  
12 reach your desk, anything of that  
13 nature?

14 A. Not to me.

15 Q. And you never had any  
16 discussions with Major Washington  
17 about it. Is that correct?

18 A. No, I don't recall. Could  
19 have. Major Washington come in here  
20 and tell you, oh, I had this on  
21 such-and-such a day, you know, I'm  
22 not sure I would say he was wrong.  
23 I just don't remember.

24 Q. Do you know whether  
25 Commissioner Evanko personally

1 played any role in Mr. Ober not  
2 having a PEMA assignment?

3 A. I would be surprised if he  
4 did.

5 Q. Okay. How about --- how  
6 about Colonel Coury, do you know if  
7 he played any role?

8 A. I would be surprised there  
9 also.

10 Q. What does the ---?

11 A. Actually it comes under my  
12 area of responsibility and that's a  
13 ---.

14 Q. I know that.

15 A. I understand.

16 Q. But, sir, I'm asking you  
17 some questions and I happen to know  
18 --- I have background here,  
19 obviously I'm not here to testify  
20 today.

21 A. I understand.

22 Q. But I'm asking you  
23 questions after a little bit of  
24 research.

25 A. Well, correct me if I'm

1 wrong.

2 Q. I don't know. It's not  
3 right for me to do that.

4 A. Tell me if I'm wrong,  
5 because I want to straighten it  
6 out.

7 Q. I agree it's under your  
8 jurisdiction as far as I know. Let  
9 me ask you, how is the front office  
10 defined in State Police parlance?  
11 Who's in the front office?

12 A. That's the Commissioner's  
13 office.

14 Q. Okay. Do you know whether  
15 Major Washington had appointed Ober  
16 back to PEMA, and then had that  
17 decision overturned by the front  
18 office? Do you know anything about  
19 that?

20 A. I don't know anything  
21 about that. Okay. Well, maybe I do  
22 know something about that.

23 Q. Think back on it.

24 A. Oh.

25 Q. Take a minute and try to

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1 go back in your mind and see what  
2 you can tell us, okay.

3 A. Well, tell me more.

4 Q. I can't tell you  
5 any more. I'm not allowed to. Your  
6 attorneys will kill me.

7 A. Well, I'm trying to get a  
8 recollection here. I don't --- I  
9 can't --- I could not have sit here  
10 and told you that Captain Ober was  
11 assigned to a PEMA cell. I didn't  
12 --- I just did not know that.

13 Q. Okay. Fair enough.

14 A. Seems to me, though, that  
15 I did know that he was wanting a  
16 position with it.

17 Q. Let's start there.

18 A. Okay.

19 Q. Let's start there.

20 A. You're indicating I'm  
21 incorrect in that, but that's just  
22 my ---.

23 Q. No, no, I think he was  
24 there. I think he was taken off of  
25 there. I think he wanted to go

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1 back. I think he wanted. I think  
2 he was ambitious to do it.

3 A. Oh ---.

4 Q. I think he was qualified  
5 and I think he was put back on there  
6 and I think somebody in the front  
7 office axed it. That's what I  
8 think.

9 A. I don't ---.

10 Q. There. If your attorneys  
11 want to jump on that, they can.

12 ATTORNEY REYNOLDS:

13 I'm only going to  
14 object, because that's a  
15 statement.

16 ATTORNEY BAILEY:

17 See.

18 ATTORNEY REYNOLDS:

19 And not a question.

20 ATTORNEY BAILEY:

21 I agree. I agree.

22 ATTORNEY REYNOLDS:

23 To the extent it may  
24 not state what we believe  
25 are the facts.

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1 ATTORNEY BAILEY:

2 See what you got me  
3 into, see what you did.

4 A. I'm just trying to help.  
5 I'm trying to clarify facts.

6 BY ATTORNEY BAILEY:

7 Q. I know. I just don't like  
8 putting ideas in your head. Tell me  
9 what you want.

10 A. Certainly, if it helps  
11 clarify, I want to be factual.

12 Q. All right. Okay.

13 A. I did not know that  
14 Captain Ober was assigned to PEMA.  
15 I have some recollection that I was  
16 asked if he could be put onto PEMA.  
17 And I'm not sure why I would have  
18 been asked that, because that's not  
19 something normally that I would do.

20 Q. Right. As you've told  
21 us. I understand that's something  
22 that ---.

23 A. You know, that's something

24 ---

25 Q. Right.

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1 A. --- that would have been  
2 done at the bureau level.

3 Q. Right.

4 A. So I don't know where to  
5 go with it from that. Did I answer  
6 your question at all?

7 Q. Yeah. Well ---?

8 A. I seem to lose sight ---  
9 lost sight of the question, I guess.

10 Q. You have a vague  
11 recollection, right?

12 A. Not that he was on it, but  
13 that he was asking to be put on it.

14 Q. All right. So you don't  
15 have recollection of his ever having  
16 been there. You do have a  
17 recollection of him making a  
18 request. Do you know if indeed he  
19 was denied or turned down, can you  
20 tell us why that would have  
21 happened?

22 A. Again, see, I don't --- I  
23 just don't remember. I don't --- I  
24 just don't remember making a  
25 recommendation. I very well could

1 have.

2 Q. One way or another?

3 A. One way or another. In  
4 fact, if I'm thinking I probably  
5 would have recommended not but, see,  
6 I don't know.

7 Q. Why? Why would you  
8 recommend not?

9 A. Well, the reasons ---  
10 well, the reasons --- well, here's  
11 why I'm confused here.

12 Q. Yeah. Yeah.

13 A. Because the reasons that I  
14 would do that are somewhat a little  
15 bit inconsistent, because had he  
16 been there for five years, okay?

17 Q. Yeah.

18 A. The reason I would not  
19 have recommended him for that  
20 position would have been his lack of  
21 his operational skills. Okay?

22 Q. So it could be after five  
23 years he's become not ---?

24 A. Yeah, but since you're  
25 telling me he's been there for five

1 years.

2 Q. Qualified?

3 A. It's not consistent.

4 That's why I have the confusion.

5 Q. Oh, I see.

6 A. Do you understand what I'm  
7 saying.

8 Q. Yeah, but if you ---?

9 A. But certainly if he had  
10 been there for five years, he would  
11 have been qualified to be there,  
12 unless somebody has knowledge that  
13 he didn't do a good job there, which  
14 I don't have that knowledge. But if  
15 I were to not recommend him for a  
16 position there, it would have been  
17 because of his non-operational  
18 experience, you see, but that would  
19 not be consistent if he had been  
20 there for five years. So that's  
21 what has me confused, but anyway I'm  
22 trying to be honest here and  
23 factual. Okay.

24 Q. I appreciate that.

25 A. Okay.

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1 Q. I appreciate that and the  
2 front office, and we know apparently  
3 it wasn't you, it wasn't you or you  
4 don't have recollection of it, but  
5 that would leave Colonel Fikus,  
6 Colonel Coury, and Commissioner  
7 Evanko to say not yet, you can't go  
8 to PEMA. Right?

9 A. I would ---.

10 Q. Or if he was even put on  
11 there by Washington to actually take  
12 him off to punish him. I mean ---?

13 A. Well, see, I don't know if  
14 that happened, sir.

15 Q. You don't know if that  
16 happened?

17 A. I don't know.

18 Q. Okay.

19 THE VIDEOGRAPHER:

20 Excuse me. We need  
21 to change tapes.

22 ATTORNEY BAILEY:

23 Okay.

24 THE VIDEOGRAPHER:

25 It's 3:32 p.m. It's

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1 the end of tape one of  
2 Joseph Westcott.

3 (SHORT BREAK TAKEN).

4 ATTORNEY BAILEY:

5 Okay. Ladies and  
6 gentlemen, please be  
7 advised the recording  
8 device is in operation.

9 THE VIDEOGRAPHER:

10 It's January 7th,  
11 2002, this is tape two, of  
12 the deposition of Joseph  
13 Westcott.

14 BY ATTORNEY BAILEY:

15 Q. Okay. Colonel Westcott,  
16 we're back on the record. I want to  
17 go back to this IIMS this system  
18 integration project. You say you  
19 don't know anything about that?

20 A. Very little, sir.

21 Q. Do you know anything about  
22 a bicentennial book committee?

23 A. No, I don't --- I knew  
24 there was one, but I had no  
25 involvement.

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1 Q. Do you know if being  
2 involved in that would be a position  
3 of prestige or honor?

4 A. I just don't know.

5 Q. You don't have any  
6 interest in it?

7 A. It wasn't in operational.

8 Q. What about the idea of  
9 collecting the State Police  
10 memorabilia, do you know anything  
11 about that?

12 A. Don't know anything about  
13 it. I mean, I know the museum's  
14 trying to do it, but other than  
15 that, that's ---.

16 Q. Ever have any discussions  
17 with Colonel Coury about that?

18 A. No. I shouldn't say no.  
19 I mean, other than that that museum  
20 came under him. He said we're out  
21 trying to get stuff.

22 Q. Let me be more ---.

23 A. And so on and so forth  
24 like that.

25 Q. I'm sorry. Let me be more

1 specific. Did you have any  
2 discussions with Colonel Coury where  
3 Mr. Ober came into the discussion  
4 about the issue of memorabilia of  
5 Pennsylvania State Police?

6 A. I don't recall. I can't  
7 say it didn't, but I don't recall.

8 Q. Do you know an  
9 LCE officer named Wilson or  
10 Christianson, either one of those  
11 two?

12 A. I'm not sure I know Wilson  
13 but I do know Christianson.

14 Q. Who's the bureau of  
15 technology services?

16 A. I think that comes under  
17 Colonel Fikus. That has to do with  
18 the --- all of the commuters and  
19 that sort of thing.

20 Q. Do you know why LCE with  
21 your authority would send those  
22 folks over to detach them over to  
23 BPTS?

24 A. Probably because they  
25 asked for them to be on some sort of

1 project action team would be my  
2 guess any way.

3 Q. Well, they weren't short  
4 people or anything over at LCE or  
5 were they?

6 A. Well, everybody's short  
7 people. But you try and do --- it's  
8 an important project for the  
9 department, so you try to suck it up  
10 where you have to so they have the  
11 tools they need to get it done.

12 Q. I see. Do you have a  
13 recollection of Major Castlenick  
14 recommending and approving Ober's  
15 request to attend training in  
16 Washington, DC, the national alcohol  
17 education symposium and you turning  
18 it down?

19 A. I don't.

20 Q. Can you tell us why you  
21 did that?

22 A. I don't remember doing  
23 that.

24 Q. Why would you do that?

25 A. I'm not sure why I would

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1 do that. If he was assigned LCE,  
2 would --- I'm not sure. No, the  
3 only reason you do --- you know,  
4 unless there's some fiscal concerns  
5 which I don't believe there were,  
6 the only reason you would do that is  
7 if it was not pertinent to his job  
8 at hand.

9 Q. Not pertinent but it was  
10 approved ---?

11 A. But if he's assigned to  
12 LCE you've got to give him the tools  
13 to do the job so I'd be surprised if  
14 I said no.

15 Q. Well, you did. I can tell  
16 you you did.

17 A. I don't recall.

18 Q. He's approved by  
19 Castlenick. It's sent over by the  
20 bureau.

21 A. I don't know why I did  
22 that.

23 Q. Okay.

24 A. Did I --- did I give a  
25 reason for that? I don't remember

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1 doing that, I'm sorry.

2 Q. Well, we believe we know  
3 the reason but that would, you know,  
4 do you know why if it was approved  
5 one year and not the next?

6 A. What? I don't know what  
7 conference it was.

8 Q. Was Ober singled out,  
9 sir? Was he singled out?

10 A. No, I told you before ---.

11 Q. He was never singled out  
12 for anything, right?

13 A. Certainly not, you know.

14 Q. All right. Okay. Give me  
15 30 seconds. I got some FBI ---  
16 group of FBI questions I think I've  
17 been through them already. Let me  
18 check.

19 A. Okay.

20 Q. Were there any --- was  
21 there any investigation into the,  
22 you know, the public corruption  
23 thing that the FBI was looking  
24 into? Was there any investigation  
25 done on that by the Pennsylvania

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1 State Police?

2 A. I don't know that. Could  
3 be.

4 Q. Who assigns investigations  
5 to the organized crime division?

6 A. Oh, that could --- their  
7 request for an investigation could  
8 come from anywhere. Probably if  
9 they were doing something there BTS  
10 would help them out. That would be  
11 my speculation. I would not  
12 necessarily know about that.

13 Q. Do you know what happened  
14 to Trooper Stanton?

15 A. I do not.

16 Q. Have you ever been  
17 assigned to the organized crime  
18 division?

19 A. I was.

20 Q. And in what --- what  
21 Deputy Commissioner has authority  
22 over OCD?

23 A. That comes under the  
24 bureau of criminal investigation  
25 which comes under Dep ---.

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- 1 Q. That's you, isn't it?
- 2 A. That's me.
- 3 Q. And you don't know whether
- 4 that was ever --- that
- 5 investigation, the underlying
- 6 political corruption case, was ever
- 7 assigned to the organized crime
- 8 division, had ever been there
- 9 whether an associated case could
- 10 have?
- 11 A. I don't know.
- 12 Q. You don't know anything
- 13 about it?
- 14 A. I don't know. It may have
- 15 been there. It certainly wouldn't
- 16 surprise me if it was. Oftentimes
- 17 BCR goes to other divisions to help
- 18 them out, and FBI to help them out
- 19 with an investigation,
- 20 surveillances, whatever they are.
- 21 But that doesn't necessarily mean I
- 22 in my position would have had
- 23 knowledge of that.
- 24 Q. In investigating Ober and
- 25 what had happened with the FBI

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1 coming to the Pennsylvania State  
2 Police, wasn't it important to know  
3 what the underlying political  
4 corruption case was about to see  
5 whether Ober had some reason for  
6 doing what he did?

7 A. It was --- it was my  
8 understanding that that was all over  
9 till we even found out about it.

10 Q. Well, you know, that's all  
11 --- well, we'll save that for a  
12 later time.

13 A. I don't know.

14 Q. Let me ask you, well, let  
15 me ask, why didn't you just bring  
16 Ober in and just sit him down and  
17 say, hey, what's this about or  
18 what's --- I mean, if you felt  
19 strongly about this thing with  
20 Conley and Fikus, why not call both  
21 of them in, or at least call Ober in  
22 and say, hey, what's going on?

23 A. Well, not --- not my job.

24 Q. Yeah.

25 A. Okay. I mean, Ober was

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1 not under my area of command. It  
2 would have been improper for me to  
3 ask him to come up and see me. It  
4 would have been improper for me to  
5 chastise him. If that was a proper  
6 thing to do.

7 Q. Was it proper for you ---?

8 A. It just would have been  
9 improper for me to do that and I  
10 wouldn't do that.

11 Q. Was it proper for you to  
12 handle the assignment of the two  
13 investigators?

14 A. It would be ---.

15 Q. That's not your area, is  
16 it?

17 A. Oh, absolutely, because  
18 they were operational. The BPR did  
19 not come under me. They're area  
20 commanders. They worked under the  
21 law enforcement section.

22 Q. I know they're area  
23 commanders for the normal process,  
24 but for this inquiry, what are you  
25 avoiding BPR? Were you avoiding

1 ---?

2 A. We don't know if there's  
3 violations of anything. And  
4 BPR kicks in when there's  
5 violations.

6 Q. You didn't know that there  
7 were violations of anything?

8 A. To my knowledge.

9 Q. Isn't that what you just  
10 said?

11 A. To my knowledge. I still  
12 don't know if there were any  
13 violations of department rules and  
14 regulations involved.

15 Q. Okay.

16 A. Let me ask you, was a  
17 BPR investigation ever completed?

18 Q. Sir, I --- I --- if it  
19 weren't during deposition, I'd take  
20 some time and answer that and some  
21 of my concerns, but it would be like  
22 being on a soap box or something.  
23 I'd probably bore you to death so I  
24 won't. And I'm sure I'd bore you to  
25 death and I don't mean to avoid your

1 question.

2 Do you know how Mr. Fikus  
3 came to be Lieutenant Colonel in the  
4 Pennsylvania State Police? Because,  
5 you know, I think it's common  
6 knowledge he wasn't recommended by  
7 Colonel Evanko, was he?

8 A. I don't know that.

9 Q. You don't know that?

10 A. No.

11 Q. Do you know who his  
12 political patrons are?

13 A. No, I didn't.

14 Q. Or who suggested he be in  
15 that position?

16 A. No idea. No idea.

17 Q. Do you know whether  
18 Commissioner Evanko has some  
19 political fear or some fear of  
20 Lieutenant Colonel Fikus?

21 A. I don't know that. You  
22 have to ask him.

23 Q. Do you ever get involved  
24 in the politics of the Pennsylvania  
25 State Police at all?

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1 A. I do my very best not to.

2 Q. Okay. Disciplinary  
3 process in the Pennsylvania State  
4 Police, can you tell us normally,  
5 let's say an --- excluding a  
6 criminal investigation into  
7 allegations whether from inside or  
8 out of the organizations of criminal  
9 misconduct, one of the things we  
10 know here, there's no question,  
11 there's no issue here of criminal  
12 misconduct at all. So we're talking  
13 about some horse of a different  
14 color and we're sort of trying to  
15 pin down exactly what it is, and you  
16 may know. You may be able to  
17 describe a particular species  
18 involved and we're having a problem  
19 with it.

20 Now, the disciplinary  
21 process, how does it work? How does  
22 it begin? Remember I had some  
23 questions of Mr. Wertz and we talked  
24 about complaints and that sort of  
25 thing. And we know here the piece

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1 of paper that was given, the notice  
2 of inquiry that was given to Captain  
3 Ober, it said that the office of  
4 chief counsel was Xed out which is  
5 normally what goes on the form and  
6 the Commissioner was put in there.  
7 Now, Mr. Wertz had never seen a form  
8 --- he wasn't used to that. You  
9 may know more about it. Well, you  
10 may not ---?

11 A. I don't.

12 Q. And that's why I want to  
13 ask.

14 A. I don't. I don't.

15 Q. All right. From your 31  
16 years of experience, how is a  
17 disciplinary, how is the or a  
18 disciplinary process initiated  
19 within the Pennsylvania State  
20 Police?

21 A. Well, there's no  
22 disciplinary implemented until an  
23 investigation is conducted. That  
24 investigation is if there's any  
25 allegation of wrong doing. That

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1 Complaint is referred to the bureau  
2 of professional responsibility.  
3 It's either done by having the  
4 complainant go directly to them, or  
5 there's a form that whoever receives  
6 that information can fill out,  
7 forward to BPR. At that point BPR  
8 either assigns an investigator  
9 either one of their own or asking a  
10 troop command to do, to assign an  
11 investigator to it. At that point,  
12 an investigation is conducted. When  
13 it's done to the satisfaction of the  
14 people in BPR, it is --- the  
15 investigation I guess is in --- is  
16 forwarded then to the appropriate  
17 commander who makes an  
18 adjudication. If discipline is  
19 appropriate, he issues the required  
20 paperwork. And it then goes to a  
21 department disciplinary officer.  
22 And I guess he decides what the  
23 discipline is pertinent. That's a  
24 general overview and I probably  
25 should not be any more specific than

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1 that because I don't --- you know,  
2 I'm not that familiar with it.

3 Q. Don't know. Well, when  
4 you met with Captain --- I'm sorry,  
5 when you met with Commissioner  
6 Evanko now regardless of any  
7 differences anyone would have with  
8 Commissioner Evanko about anything,  
9 no doubt about his intelligence,  
10 you'd agree with that?

11 A. Absolutely.

12 Q. Rather bright man. Now,  
13 you had a meeting with him or had  
14 meetings after this thing came up  
15 about Ober and Fikus, informing him  
16 late. What --- did he indicate what  
17 he thought these guys might have  
18 done wrong, particularly Mr. Ober?  
19 I mean, we know they didn't tell him  
20 which personal offensive. I'm sure  
21 that was personally offensive. But  
22 aside from that if indeed he even  
23 --- you know, I'm not saying that  
24 he even indicated a personal  
25 feeling, what did these guys do

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1 wrong? I mean, what did Ober do

2 wrong? What was the ---?

3 A. I don't know and as you  
4 heard ---.

5 Q. You didn't know at the  
6 time?

7 A. As you heard Major Wertz  
8 ---

9 Q. Yeah.

10 A. --- we weren't out looking  
11 to see if anybody did anything  
12 wrong. We were out looking to see  
13 what all the attendant facts were  
14 and then bring those facts to the  
15 attention of the Commissioner and he  
16 can make those decisions based on  
17 those, whatever he wants to decide.

18 Q. Okay. So being sent to  
19 Washington was not a punishment at  
20 least to the best of your knowledge,  
21 correct?

22 A. That certainly was not  
23 motivated on my part that way.

24 Q. Being removed from PEMA,  
25 or not permitted to get back on

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1 PEMA, or not be permitted to even  
2 participate in PEMA regardless of  
3 what the underlying scenario is and  
4 you said you don't know?

5 A. And I don't know, true.

6 Q. And you don't know, but to  
7 the best of your knowledge or belief  
8 that was not a punishment for  
9 anything?

10 A. Well, you know, I can't  
11 comment, because I don't know. I  
12 don't know what the circumstances  
13 were.

14 Q. All right. IIMS, being  
15 removed from it, not being allowed  
16 to participate in it, was not any  
17 kind of a punishment or discipline  
18 in any way, right?

19 A. No, no, it had nothing to  
20 do with that.

21 Q. Being assigned to LCE was  
22 not a punishment or discipline in  
23 any way, right?

24 A. No, it's my understanding  
25 that was required.

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1 Q. Young was a Captain when  
2 he was sent out to Washington,  
3 right?

4 A. I'm not sure.

5 Q. You're not sure.

6 A. You had said earlier that  
7 he was a Lieutenant.

8 Q. I thought he was.

9 A. And I ---.

10 Q. But it's not me.

11 A. I'm not sure.

12 Q. It's what you recollect.  
13 It's what you say that counts not  
14 me.

15 A. I don't know. I mean, I  
16 could stand to be corrected. He  
17 could have been a Lieutenant. He  
18 could have been a Captain. I don't  
19 remember when he made rank.

20 Q. Washington, DC, and being  
21 disallowed the training down there  
22 was not retaliation or punishment,  
23 right?

24 A. What Washington, DC?

25 Q. The training for the

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1 alcohol symposium?

2 A. Oh.

3 Q. He was at LCE and they had  
4 done that training and they  
5 continued I guess, but he was  
6 disallowed?

7 A. I don't remember.

8 Q. But you don't remember so  
9 you can't say.

10 A. I just don't remember the  
11 circumstances.

12 Q. Being --- in your view he  
13 was not investigated because there  
14 was a desire to teach him a lesson,  
15 get back at him or stigmatize him,  
16 is that right?

17 A. I'm sorry?

18 Q. Investigating Captain Ober  
19 or investigating whatever polite  
20 euphemism is used to describe it,  
21 the investigation or inquiry into  
22 the affairs or the conduct of  
23 Captain Ober in regards the  
24 FBI probe was not done to stigmatize  
25 Captain Ober in any way, correct,

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1 sir?

2 A. No, it's my understanding  
3 it's to find the facts.

4 Q. Just ---?

5 A. That's my instructions  
6 find out what they are and report  
7 them to the Commissioner.

8 Q. Now, out of those facts,  
9 did somebody come up in the  
10 investigation that the regulations  
11 of the Pennsylvania State Police did  
12 not address the need for some sort  
13 of regulation defining the chain of  
14 command and what somebody's supposed  
15 to do when they learn something or  
16 whatever?

17 A. I have no idea, sir. I  
18 don't.

19 Q. Okay. Now, Colonel, let  
20 me ask you about that last thing  
21 just one --- or a couple of  
22 additional questions. On the --- is  
23 there a chain of command regulation,  
24 do you know?

25 A. I don't. I don't know

1 that.

2 Q. Okay. See, I've never  
3 seen one. Even in the Army I've  
4 never seen one.

5 A. I'm not sure I have  
6 either.

7 Q. Do you know why there  
8 isn't anything?

9 A. It's sort of the way I was  
10 raised on the department.

11 Q. Yeah, I know, I understand  
12 the way you're sort of raised, but  
13 do you know of any military  
14 organization or any police  
15 organization that has a strict chain  
16 of command regulation?

17 A. I don't. I don't know.

18 Q. Do you know whether  
19 accreditation with the national ---  
20 or any national organizations  
21 require a chain of command  
22 regulation?

23 A. I don't know.

24 Q. Do you think there should  
25 be a chain of command regulation

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1 which says to an underling out there  
2 you shall only report to your  
3 immediate superior and shall not  
4 talk to anybody else about a matter  
5 of importance to Lord knows I don't  
6 know how you're supposed to decide  
7 these things, but do you think  
8 something like that's a good idea?

9 A. No, I don't. I don't  
10 think so.

11 Q. Either do --- neither do  
12 I. Regulation AR --- is it 1.102  
13 C? Am I saying that right, 1.102 C,  
14 are you familiar with that?

15 A. No, if I could read it  
16 perhaps but ---.

17 Q. No, that's okay. I don't  
18 want to --- that's not fair to you.  
19 If you're --- you're retired since  
20 July of?

21 A. 2000.

22 Q. 2000, is that it? 2000?

23 A. Yeah, a year and a half  
24 ago.

25 Q. Yeah, I'm sorry. Do you

1 know whether Darrell Ober was  
2 removed from the bicentennial book  
3 committee as a, you know, who  
4 removed him from there and why that  
5 was done?

6 A. I'm sorry, I don't know.  
7 No knowledge at all.

8 Q. Do you know whether in  
9 September of 1999 Mr. Conley barred  
10 Ober from attending an internal  
11 affairs division meeting?

12 A. No knowledge at all.

13 Q. Have you ever heard about  
14 that before?

15 A. Didn't even hear about it  
16 until just now.

17 Q. Do you think a Trooper  
18 Jorge, J-O-R-G-E, Jorge or --- I  
19 don't know how they're pronouncing  
20 it, does that mean anything to you?

21 A. No.

22 Q. An internal affairs  
23 division where a Captain Brown  
24 investigated a Trooper, Trooper  
25 J-O-R-G-E?

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1 A. No, I don't.

2 Q. Doesn't strike a  
3 responsive cord? Now, Captain Ober  
4 was where when the decision was made  
5 on January 7th, 2000, by the  
6 Commissioner to send him to  
7 Washington? Where was he? Where  
8 was he?

9 A. I don't know. All I was  
10 told and my only recollection is  
11 that I was told that he was  
12 available. Where he was, I don't  
13 know. I know he was, I know he was  
14 --- he was in BPR, and he was in  
15 IIMS, but which one when, where, I  
16 can't tell you that.

17 Q. Now, here's internal  
18 affairs division, bureau of  
19 professional responsibility. What  
20 comes under internal affairs  
21 division? Is bureau of professional  
22 responsibility one bureau, that's  
23 just one bureau?

24 A. Uh-huh (yes).

25 Q. How many other bureaus are

1 under IAD?

2 A. No, no, BPR is the  
3 bureau. IAD is the division.

4 Q. Okay.

5 A. There's another division  
6 of systems and provides review.

7 Q. Okay. So IAD if you're an  
8 IAD member again we have these  
9 things spread all over the record  
10 and I don't want a judge getting  
11 confused in reading this stuff, if  
12 you're in IAD, BPR, are they the  
13 same thing?

14 A. Yes.

15 Q. Yeah, same thing. Well,  
16 Lieutenant John Brown he gets  
17 promoted to Captain when Ober gets  
18 sent out to Washington, right, or am  
19 I wrong about that?

20 A. I don't know that. I  
21 mean, I just don't know that. See,  
22 BPR didn't come under me, so I  
23 didn't --- I didn't have any  
24 knowledge of that or didn't have any  
25 need to know that. That was Colonel

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1 Coury.

2 Q. All right. Let me go back  
3 over that. You don't know if ---  
4 you --- somebody told you Ober was  
5 available. Do you remember who told  
6 you Ober was available?

7 A. I --- it could have been  
8 Colonel Fikus. Could have been  
9 Colonel Coury. Could have been  
10 Colonel Evanko. I don't know.

11 Q. Well, here it is now.  
12 Here's February 14th. Lieutenant  
13 David Young bureau of criminal is  
14 assigned as special projects officer  
15 assisting the commander area three.  
16 The assignment of Captain Darrell  
17 Ober of special projects officer  
18 commander area three is rescinded.

19 Well, now look here. On  
20 January 7, it looks like Darrell  
21 Ober is director of the internal  
22 affairs division BPR. And then he's  
23 pulled out of that. Somebody else  
24 is put in. And he's sent out there  
25 to Washington. And then that's

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1 rescinded. So I wonder what  
2 available meant. You don't know  
3 when somebody said he was available?

4 A. I don't.

5 Q. You don't know what  
6 availability meant?

7 A. No, I don't.

8 Q. Now, he's assigned to the  
9 bureau of liquor control officer, to  
10 a Lieutenant's position as central  
11 section commander operations  
12 division, and that is on a February  
13 14th department directive from the  
14 Commissioner, from the boss. The  
15 boss sent him to LC. Okay. That's  
16 all right. Okay. Let me do one  
17 final check.

18 ATTORNEY BAILEY:

19 Do you two have any  
20 questions?

21 ATTORNEY REYNOLDS:

22 I have.

23 ATTORNEY BAILEY:

24 Why don't you go  
25 ahead and I'll step out

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1 with Darrell whenever  
2 you're finished.

3 EXAMINATION

4 BY ATTORNEY REYNOLDS:

5 Q. Okay. You indicated,  
6 Colonel Westcott, that you didn't  
7 have any independent recollection of  
8 turning Captain Ober down for a PEMA  
9 assignment, is that correct?

10 ATTORNEY BAILEY:

11 Incidentally for the  
12 record, this is Joanna  
13 Reynolds. Okay.

14 A. No, I --- no, I don't.

15 BY ATTORNEY REYNOLDS:

16 Q. And you indicated that you  
17 don't know who, if anyone, in the  
18 front office, meaning of the  
19 Defendants here, Colonel Coury or  
20 Colonel Evanko, would have turned  
21 him down for a PEMA assignment if,  
22 in fact, that happened; is that  
23 correct?

24 A. I don't know if any of  
25 those would have.

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1 Q. Do you know then if anyone  
2 was seeking to punish him by turning  
3 him down for a PEMA assignment? If  
4 you don't know who did it, would you  
5 have any knowledge as to what the  
6 intent was to punish him?

7 A. Not to PEMA, no.

8 ATTORNEY REYNOLDS:

9 I think that's all I  
10 have.

11 ATTORNEY BAILEY:

12 Okay. If we could  
13 hold on for just one  
14 second. In fact, I'm  
15 going to leave the  
16 equipment on, because I  
17 think it's going to take  
18 about ten seconds. Okay.  
19 So please don't talk among  
20 yourselves instead of  
21 shutting all this junk  
22 down and turning it on in  
23 ten seconds. I think  
24 we're about done.

25 (OFF RECORD DISCUSSION).

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1                   ATTORNEY BAILEY:

2                   Colonel Westcott, I'd  
3                   like to express my  
4                   appreciation for you  
5                   coming here today and  
6                   answering questions. I  
7                   understand you have quite  
8                   a drive. I think I could  
9                   probably go on for about  
10                  another hour,  
11                  hour-and-a-half but I  
12                  think we're okay. It's  
13                  four o'clock and I know  
14                  you had wanted to get  
15                  somewhere so you have some  
16                  daylight. Thank you very  
17                  much.

18       A.           Okay.

19                   ATTORNEY BAILEY:

20                  I appreciate your  
21                  cooperation, sir. Thank  
22                  you, sir.

23                   THE VIDEOGRAPHER:

24                  I'll shut this down.

25                   ATTORNEY BAILEY:

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1 Yes.

2 THE VIDEOGRAPHER:

3 The time is a little  
4 different from yours.

5 4:04 p.m., the deposition  
6 of Joseph Westcott is  
7 concluded. Thank you.

8 ATTORNEY BAILEY:

9 Thank you.

10 \* \* \* \* \*

11 DEPOSITION CONCLUDED AT 4:04 P.M.

12 \* \* \* \* \*

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF CAMBRIA )

3 C E R T I F I C A T E

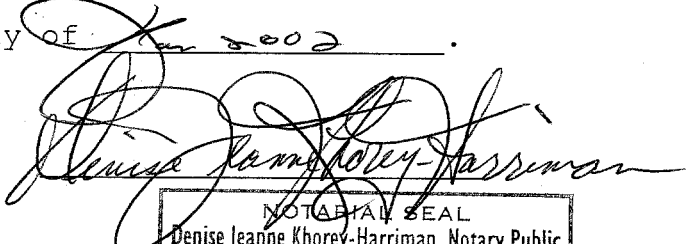
4 I, Denise J. Khorey-Harriman, RMR, a Notary  
5 Public in and for the Commonwealth of Pennsylvania,  
6 do hereby certify:

7 That the witness was first duly sworn to testify  
8 to the truth, the whole truth, and nothing but the  
9 truth; that the foregoing deposition was taken at the  
10 time and place stated herein; and that the said  
11 deposition was taken stenographically by me and  
12 reduced to typewriting, and constitutes a true and  
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing  
15 of said depositions were (not) waived by counsel for  
16 the respective parties and by the witness.

17 I further certify that I am not a relative,  
18 employee or attorney of any of the parties, nor a  
19 relative or employee of counsel, and that I am in no  
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and stamp this 22 day of Mar 2002.

23   
24  
25

NOTARIAL SEAL  
Denise Jeanne Khorey-Harriman, Notary Public  
Johnstown, Cambria County, PA  
My Commission Expires Mar. 7, 2005

•PITTSBURGH, PA

•CLEARFIELD, PA

•STATE COLLEGE, PA

•HOLLIDAYSBURG, PA

•ERIE, PA

•OIL CITY, PA

•HARRISBURG, PA

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•WILKES-BARRE, PA

•CHARLESTON, WV

SP 3-200 (2-89)

**PENNSYLVANIA STATE POLICE  
DEPARTMENT DIRECTIVE**

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See SO. 98-69,  
dated, 06-09-98



See Subject CLEAN  
Message, dated 09-17-93

See Special Order  
95-82, dated 05-12-95.

See Special Order  
98-22, dated 03-05-98.

**SUBJECT: INTERNAL INVESTIGATIONS**

**25.01 AUTHORITY**

The Bureau of Professional Responsibility (BPR), Internal Affairs Division, is authorized to recommend to the Commissioner policies and procedures to initiate, conduct and/or control all necessary investigations, and to process all complaints or allegations of misconduct by personnel. Members of the Bureau of Professional Responsibility, when performing Internal Affairs duties, are vested with the line authority of the Commissioner.

**25.02 PURPOSE**

The purpose of this regulation is to establish a prompt, fair, thorough, factual and impartial means to investigate complaints or allegations involving personnel.

**25.03 GOALS**

- A. Protection of the Public: The public has the right to expect efficient, fair and impartial law enforcement. Any misconduct by personnel must be detected, thoroughly investigated and properly adjudicated to assure these goals.
- B. Protection of the Department: The integrity of the Department depends on the personal integrity and self-discipline of all personnel. When an informed public knows that the Department honestly and fairly investigates and adjudicates all allegations of misconduct against its personnel, confidence will be promoted and public support will be enhanced.
- C. Protection of Personnel: A thorough investigation of all allegations of misconduct serves to protect the integrity of personnel and will safeguard against false or malicious complaints.

ATTACHMENT 8  
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- D. Discovery of Unsatisfactory Performance: Personnel who demonstrate an inability to satisfactorily perform their duties must be identified for the protection of the public, the Department and its personnel.

25.04 DEFINITIONS

- A. Administrative Action: Corrective action taken by command/supervisory personnel which may include the issuance of a Disciplinary Action Report (DAR), Form SP 3-336.
- B. Administrative Investigation: Inquiries into alleged misconduct by personnel or any inquiry into the actions of Department personnel required by directives where no misconduct is alleged.
- C. BPR Control Number: A sequential number assigned by the Internal Affairs Division to index all complaints and administrative investigations.
- D. Bureau Register: A compilation of data indexing the initiation and processing of administrative investigations by BPR Control Number.
- E. Complainant: A person with knowledge of an alleged incident of misconduct, or violation of a statute or Department directive, who brings the information to the attention of the Department.
- F. Complaint: Any allegation of misconduct made against Department personnel.
- G. Complaint Investigation: An administrative investigation which was initiated because of a complaint.
- H. Full Investigation: An in-depth investigation in which all pertinent facts are gathered and are thoroughly and impartially reported in a General Investigation Report, Form SP 7-0025.
- I. Limited Investigation: An investigation which is reported by Correspondence, Form STD-501, and clearly establishes that:
1. The alleged misconduct failed to constitute a violation of Department rules and regulations.

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2. The complainant was mistaken and the misconduct alleged was not attributed to personnel.
  3. The complaint appears to be as a result of official police action which was adverse to the complainant and alleges only a de minimus violation.
  4. The complainant(s) refused to verify their complaint by signing a completed Complaint Verification Form and the nature of the complaint does not include allegations of criminal conduct or conduct which could reasonably be construed to result in a recommendation of court-martial by the Department Disciplinary Officer.
- J. Medical Treatment: Care received at a recognized medical facility or from a licensed medical practitioner.
- K. Misconduct: Any violation of the Pennsylvania State Police Code of Conduct or any other conduct which could reasonably be expected to destroy public respect and confidence in the Pennsylvania State Police.
- L. Non-Complaint Investigation: An investigation into the actions of Department personnel as provided by directive or requested by the Office of Chief Counsel, and no misconduct is alleged.
- M. Performance Inadequacies: Minor infractions of omission/commission by a member which violate a Department policy or regulation. Infractions of this type do not include conduct which involves compliance to lawful orders, the veracity of a member, criminal or civil liability, or publicity which may adversely affect the Department or its personnel.

#### 25.05 COMPLAINT INVESTIGATION CATEGORIES

- A. Physical Abuse: An allegation that an individual was physically mistreated or assaulted (does not include physical force investigations that are initiated by Department directive with no complaint).

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- B. Verbal Abuse: An allegation that profane or demeaning language was directed at the complainant or another person by personnel.
- C. Criminal Conduct: Any alleged violation(s) of federal, state or local statutes.
- D. Improper Conduct On Duty: Any alleged misconduct committed while on duty that, by its very nature, is demeaning to the professional image of the Department, and constitutes a violation of Department rules and regulations.
- E. Improper Conduct Off Duty: Any alleged conduct which could reasonably be expected to impact negatively upon the public's perception of the Department even though it occurred off duty.
- F. Dissatisfaction With Performance of Duty: An allegation that personnel failed to adequately perform or document a required or expected task, e.g., improper or incomplete accident or criminal investigations, failure to assist a disabled motorist, etc.
- G. Other: Allegations that are not easily categorized or identified as falling into a specific category, etc.

#### 25.06 NON-COMPLAINT INVESTIGATION CATEGORIES

- A. Legal Intervention: Incidents when a member/enforcement officer, while in the course of their duties, intentionally involves a vehicle in a collision or establishes a roadblock which results in a collision, for the purpose of preventing the escape of a subject.
- B. Shooting Incident: Incidents when a member/enforcement officer discharges a weapon, including tear gas; another law enforcement officer discharges a weapon in the presence of a member/enforcement officer; or, a subject fires a weapon while a member/enforcement officer is present. Exceptions are listed in Section 25.10 E. 9.
- C. Physical Force Incident: Incidents when a member/enforcement officer uses physical force which results in death, or injury which requires medical treatment to any involved individual other than the member/enforcement officer.

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- D. Attorney Work Product: Investigations conducted at the request of the Office of Chief Counsel.

25.07 DISPOSITIONS

A. Complaint Investigations:

1. Sustained: Investigation indicates misconduct did actually occur.
2. Not Sustained: Investigation failed to conclusively prove or disprove the allegation.
3. Unfounded: Indicates that the incident did not or could not have occurred as alleged.
4. Policy Void: Indicates that the action of the Department or the involved member(s) was consistent with Department policy, but the complainant still suffered harm.
5. Withdrawn: Indicates that the complainant refused to sign a Complaint Verification and the investigation was terminated or an investigation was otherwise concluded on advice of the Director, Bureau of Professional Responsibility.

B. Non-Complaint Investigations:

1. Justified: The actions taken were within the guidelines, for the use of force under the existing circumstances, as established by the Department.
2. Improper: The actions taken exceeded the limits defined by the Department or by law for the use of force.

25.08 DUTIES AND RESPONSIBILITIES

- A. Personnel: Personnel shall ensure that the confidentiality of all complaints is maintained in accordance with existing regulations.
- B. Director, Bureau of Professional Responsibility: The Director, Bureau of Professional Responsibility shall:
1. Assign and coordinate all investigations required by this regulation. Depending on the

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nature of the incident, the investigation may be conducted by a member of the Internal Affairs Division or assigned to a Commissioned Officer or noncommissioned officer of the Director's choice.

2. Assist the Affirmative Action Officer in the investigation of affirmative action-related complaints upon request. Also, review other such complaints and investigations in consultation with the Affirmative Action Officer.
3. Ensure that all investigations are conducted in a fair, prompt, thorough and impartial manner. Reports shall be completed in a timely manner and within established statutes of limitations per collective bargaining agreement.
4. Retain supervisory responsibility for all investigations. Specific investigative procedures may be ordered if it is determined to be necessary, prudent or desirable.
5. Furnish an acknowledgement of receipt, in writing, to the complainant. Refer to Appendage III.
6. Provide a report, as requested, summarizing the Internal Affairs Division's activities, to the Commissioner/designee.

C. Director, Internal Affairs Division: The Director, Internal Affairs Division shall:

1. In the absence of the Director, Bureau of Professional Responsibility, assume all duties relative to the administration of the internal affairs function.
2. Exercise supervisory control over all investigations assigned to members of the Internal Affairs Division.
3. Ensure all investigations are conducted in a fair, prompt, thorough and impartial manner.
4. Make the notifications to the Office of Chief Counsel as outlined in Sections 25.10 D. 1. and 25.10 E. 1.

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D. Area Commanders/Bureau Directors: The Area Commanders/Bureau Directors shall:

1. Review all investigative reports in a timely manner and within established statutes of limitations per collective bargaining agreement.
2. Provide guidance and advice to the Troop Commander/Division Director responsible for making administrative decisions.
3. Assume the responsibilities enumerated in Section 25.08 E. when the subject of the investigation is a Troop Commander/Division Director under their command, or as directed by a Deputy Commissioner.
4. Endorse the Troop Commander's/Division Director's administrative decision by indicating concurrence or nonconcurrence.
  - a. In cases of verbal abuse or dissatisfaction with performance of duty, a simple statement of this finding shall suffice if there is concurrence. All statements of nonconcurrence require a full explanation of points of difference.
  - b. Allegations, other than verbal abuse and dissatisfaction with performance of duty, require an endorsement indicative of an independent review of the facts.

E. Troop Commanders/Division Directors: Troop Commanders/Division Directors shall:

1. Ensure compliance with the provisions of this regulation.
2. Determine, in concurrence with the Director, Bureau of Professional Responsibility, whether an investigation shall be a full or limited investigation.
  - a. Upon receipt of a Use of Force or Complaint Reception and Processing Worksheet, Form SP 1-101, in which the allegation involves only performance inadequacies, the Troop

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Commander/Division Director shall contact the Disciplinary Officer and provide the details of the complaint.

- b. If the Disciplinary Officer concurs with the Troop Commander/Division Director that the complaint involves only performance inadequacies, the Disciplinary Officer shall contact the Director, Bureau of Professional Responsibility, for concurrence. The Director, Bureau of Professional Responsibility, shall then ensure contact is made with the Troop Commander/Division Director and provide them with a BPR Control Number.
  - c. For issues relating to performance inadequacies, the Troop Commander/Division Director shall be responsible for ensuring the preparation and submission of the Review of Performance Complaint, Form SP 1-101A. This report shall be appended to the Use of Force or Complaint Reception and Processing Worksheet, and a copy forwarded to the Bureau of Professional Responsibility for retention. The Troop Commander/Division Director shall retain a copy of this report and maintain it in a supervisory file established for that purpose.
  - d. In all other cases, concurrence must be obtained directly from the Director, Bureau of Professional Responsibility, regarding the scope of investigations to be conducted.
  - e. Inform the Director, Bureau of Professional Responsibility of those cases when a complainant refuses to sign a Complaint Verification after being requested to do so by a Troop/Bureau investigator.
3. Assign a Lieutenant or noncommissioned officer, outside of the subject's chain of command, to those investigations required by this regulation which are to be investigated

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at the Troop/Division level. An investigator in the subject's chain of command may be assigned when warranted by circumstances. All assignments shall be made in concurrence with the Director, Bureau of Professional Responsibility, prior to actual assignment.

NOTE: When the subject is a Pennsylvania State Troopers Association (PSTA) member, PSTA officers (President, Vice-President, Secretary, Treasurer) or members of the Grievance Committee shall not be assigned to conduct the investigation.

4. Assist members of the Internal Affairs Division in investigations required by this regulation upon request.
5. Notify affected personnel of the results of the investigation as soon as practicable and within established statutes of limitations. Notices to personnel who had previously been issued a Notification of Inquiry, Form SP 1-102, shall be made in writing, by either correspondence or initiation of administrative action. The correspondence shall include a specific disposition using one of the defined terms contained in this directive.
  - a. If the disposition of the investigation is unfounded, the subject shall not be counseled. Other performance issues uncovered through the investigation shall be addressed in separate correspondence or by counseling, which shall be made a part of the supervisory file.
  - b. If an allegation is not sustained, the member may be counseled on relevant regulations or directives.
6. Initiate administrative action when warranted, upon receipt of an investigation, in accordance with AR 4-9 or FR 3-3. When administrative action is initiated in accordance with FR 3-3, the Troop Commander/Division Director shall prepare a detailed summary outlining the basis for discipline. The summary will be provided to the member as required by existing collective bargaining agreements. If a DAR is issued, a copy of the summary will be forwarded as an attachment to

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the supplemental General Investigation Report. The DAR and a copy of the summary will also be forwarded under separate cover to the Disciplinary Officer. When administrative action is initiated for employees, the provisions of AR 4-9 shall be applicable.

7. Institute the following steps when an investigation is reviewed and it is discovered that someone other than or in addition to the individual listed in Block 4 of the Use of Force or Complaint Reception and Processing Worksheet has violated Department policies, regulations or procedures and there is a likelihood that a DAR will be issued:
  - a. Advise the additional subject(s) of the complaint by issuing a Notification of Inquiry, Form SP 1-102.
  - b. Direct the subject(s) to submit correspondence, STD-501, to the Troop Commander/Division Director addressing the issue(s) listed in the Notification of Inquiry.
  - c. List the subject(s) in Block 5 of the supplemental General Investigation Report.
  - d. Direct further investigation or, if the investigation is complete, initiate the review process.
8. Notify the complainant of the results of the investigation, either verbally or in writing. Notify public officials who were interviewed, such as district attorneys, judges, etc., either verbally or in writing, of the results of the investigation if it is unfounded. These notifications shall be noted in the supplemental General Investigation Report.
9. Refer the investigation, if circumstances warrant, to the appropriate Criminal Investigation Unit when the facts of the investigation reveal that false information has been provided with the intent to implicate personnel in the commission of a crime, or the facts indicate other criminal conduct on the part of the complainant.

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9/2/93F. Investigators: Investigators shall:

1. Ensure that all investigations conducted are thorough and impartial.
2. Contact the Director, Bureau of Professional Responsibility immediately whenever investigative difficulties occur or when assistance is desired in any phase of the investigation.
3. Assist federal, state, county and municipal law enforcement agencies with investigations wherein personnel may be implicated in illegal activities or other acts of misconduct.
4. Assist, upon request, the Office of Chief Counsel, in preparing cases when personnel are subjected to administrative action and/or criminal action, and conduct an investigation into factual allegations contained in civil actions, claims or other notices which could expose the Department or its personnel to civil liability.
5. Notify the Director, Bureau of Professional Responsibility, immediately, when it becomes apparent by the facts gathered during an investigation that the Department may be the subject of civil litigation.
6. Obtain a written prosecutorial decision from the district attorney in all cases where the conduct alleged may be criminal in nature. This decision should be obtained prior to the issuance of the Administrative Warning. The Director, Bureau of Professional Responsibility, shall be notified in the event the district attorney declines to render such written prosecutorial decision, or fails to render same in a timely manner.
7. When practical, the subject(s) shall be given reasonable notice of the time, date and location of their interview. They should be informed of their right to have a union representative present at the interview. In all cases, requests for union representation during an interview by a subject(s) of an investigation shall be granted.

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NOTE: The subject(s) assumes responsibility for arranging for such representation. Absent exigent circumstances, the subject(s) shall be provided reasonable time to arrange for representation. The subject(s) has no right to a specific representative, only to one that is the nearest and most readily available.

8. Ensure the constitutional rights specified in Miranda v. Arizona and Garrity v. New Jersey are protected; and provisions granted by existing collective bargaining agreements are not violated. (Refer to Appendages IX and X.) Issue the Administrative Warning, Form SP 1-104 (Appendage VIII), in administrative investigations to further advise the subject(s) of the investigation of their rights under "Garrity"; that the questioning concerns administrative matters relating to the official business of the Department. The Rights Warning and Waiver Notice to Pennsylvania State Police Personnel, Form SP 1-103 (Appendage IX), shall be given to the subject(s) of the investigation to advise of rights under "Miranda" when there is the possibility of criminal charges.
9. Issue the Notification of Inquiry as soon as practical to the affected personnel. In those cases where the investigation could be impeded or compromised, the investigator shall determine the appropriate time to issue the notification. (Refer to Appendage IV.)
10. Any subject interviewed in regards to an investigation who has reason to believe their statements could result in administrative action being taken against them, shall be afforded union representation if requested.
11. Provide personnel, who are required or requested to sign any forms during a BPR investigation, with a copy of any signed forms.
12. When applicable, transcribe the complaint on the Complaint Verification, Form SP 1-108, Appendage XII and obtain the complainant's signature.

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G. Personnel Receiving Complaints: Personnel receiving complaints shall:

1. Receive complaints against personnel in a courteous manner.
2. Document complaints when they are received. Complainants shall not be advised to call back later to speak with a supervisor or instructed to contact the Bureau of Professional Responsibility directly. This does not prohibit supervisors from recontacting a complainant to clarify complaint information.

NOTE: Personnel desiring to initiate a complaint shall be responsible for completing their own Use of Force or Complaint Reception and Processing Worksheet.

3. Ensure the confidentiality of all complaints is maintained.
4. Process all complaints in accordance with the provisions of this regulation.

H. Personnel Who are the Subject of an Administrative Investigation:

1. May at any time during the course of an internal investigation, be ordered by the appropriate authority to submit to any or all of the following:
  - a. Breath test.
  - b. Urine test.
  - c. Blood test.
  - d. Polygraph test.
  - e. Lineup.
  - f. Medical/psychological/psychiatric examination.
  - g. Any other non-testimonial evidence test.
  - h. Questioning related to alleged misconduct or performance of duty.

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2. Shall be advised that none of the results of the tests or information received from the procedures listed in Section 25.08 H. 1., can be used against them in a criminal prosecution.
  3. Shall, upon direction of the investigating officer or other authority, be required to submit correspondence related to the alleged misconduct or performance of duty. Absent exigent circumstances the submission shall be within 48 hours of being directed to do so. The 48 hours can be extended with the approval of the investigating officer or the Director, Bureau of Professional Responsibility.
  4. Shall be interviewed by the investigating officer.
  5. May obtain the results of any of the test/examination procedures listed in Section 25.08 H. 1. upon written request to the Director, Bureau of Professional Responsibility. The results may be provided in the form of a copy or other written documentation.
  6. Shall be afforded all rights contained in existing collective bargaining agreements.
  7. Shall maintain confidentiality of investigations until completed.
  8. Shall cooperate and answer all questions honestly and completely.
- I. Personnel Who are the Subject of a Criminal Investigation: Personnel who are the subject of a criminal investigation shall be afforded the constitutional protections which are guaranteed as a result of United States Supreme Court decisions in Miranda v. Arizona and Garrity v. New Jersey, as applicable.

#### 25.09 INVESTIGATIVE ASSIGNMENT CRITERIA

- A. Circumstances: Administrative investigations conducted under the following circumstances are subject to the provisions of this directive and the Internal Affairs Division may, at the discretion of the Director, Bureau of Professional Responsibility, retain primary investigative responsibility:

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1. Shooting incidents and physical force incidents as defined in directives, regardless of personnel duty status.
2. Any allegation of criminal conduct directed against personnel.
3. Any allegation of misconduct directed against members.
4. Citizen complaints or any allegation of misconduct directed against personnel which could result in termination of employment. The provisions of AR 4-9 shall apply to performance inadequacies and/or cases of minor misconduct, e.g., traffic citations.
5. Allegations of violations of AR 4-6, FR 1-1 and other allegations of discrimination, harassment or violation of civil rights.
6. Investigations initiated in accordance with FR 6-4, legal intervention.
7. Investigations initiated as a result of contemplated administrative action related to FR 6-4.
8. Investigations initiated in accordance with FR 5-4.
9. Motor vehicle accidents resulting in the death of any person when:
  - a. Pursuit is a factor.
  - b. A Department vehicle is involved.
10. Any dog bite resulting from a Canine Enforcement Team requiring treatment by a licensed medical practitioner.
11. Investigations conducted at the request of the Commissioner.

B. Investigative Responsibility: The following criteria will be considered by the Director, Bureau of Professional Responsibility, in determining if the Internal Affairs Division will assume investigative responsibility or if the investigation will be assigned to Troop/Division personnel:

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1. Seriousness or complexity of the allegation to be investigated.
  2. Source of the complaint.
  3. Number of personnel involved.
  4. Duty assignment of personnel involved.
  5. Geographical limitations.
  6. Need for internal security relative to all or part of the investigation.
  7. Any exceptional circumstance noted by or brought to the attention of the Director, Bureau of Professional Responsibility.
- C. Performance Inadequacies: The Internal Affairs Division will not assume investigative responsibility for mere performance inadequacies or procedural discrepancy violations unless they are indicative of a more serious underlying problem. Addressing the preceding issues is a function of first line supervision and should be handled at that level through counseling, training or other remedial action.
- D. Complaints Initiated by Personnel: The Use of Force or Complaint Reception and Processing Worksheet shall be completed in accordance with Section 25.10 B. of this regulation. No investigation will be undertaken into complaints lodged by personnel unless a substantiation of the allegation would give rise to formal discipline.
- E. Investigatory Difficulties: If in the course of monitoring an ongoing investigation, the Director, Bureau of Professional Responsibility, determines that investigatory difficulties exist, the Internal Affairs Division may be directed to assume full or partial responsibility for conducting that specific investigation. This may occur at any stage of the investigation.

#### 25.10 COMPLAINT PROCESSING

- A. Types of Complaints: Complaints may be received in any of the following manners and shall be processed in accordance with this regulation in all instances:

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1. Telephone: Self-explanatory.
2. In Person: Individuals may appear at a Department installation, or may make a complaint to personnel at any location.
3. Correspondence: Self-explanatory.

B. Receiving Complaints:

1. Every complaint, whether anonymous, verbal or written, received by personnel shall be recorded on the Use of Force or Complaint Reception and Processing Worksheet, and processed as described in Appendage I. When the complaint involves personnel in the chain of command and the process described in Appendage I is inappropriate, contact may be made directly with the Internal Affairs Division.
2. Complainants shall not be required to appear at a Department installation to initiate a complaint.
3. Complainants may remain anonymous; however, a reasonable effort to obtain identification should be made.
4. If their identity is known, complainants shall be advised that a Department representative will contact them.
5. The following procedure shall be followed by personnel receiving a complaint at times other than normal working hours:
  - a. In those cases which are not of a serious nature and do not require an immediate response from an Internal Affairs Division investigator, the information shall be documented and processed in accordance with Appendage I.
  - b. In serious cases which warrant the immediate response of an Internal Affairs Division investigator, personnel receiving the complaint shall immediately notify, through channels, the Troop Officer of the Day (OD). The Troop OD shall then contact the Department Headquarters

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OD, who shall provide the name of the appropriate Bureau of Professional Responsibility duty member to call for an evaluation of the necessity of an immediate response. Any incident which results in the death or serious injury of a person; that involves the physical arrest of personnel, or major breaches of conduct by personnel; or that is likely to generate more than routine public interest, should be considered serious in nature.

C. Notifying Involved Individuals:

1. The Director, Bureau of Professional Responsibility, shall notify the complainant that their complaint has been received. When personnel initiate a complaint, this notification may not be required. (Refer to Appendage III.)
2. The assigned investigator shall officially notify affected personnel of a pending investigation, unless circumstances dictate otherwise. The Notification of Inquiry shall be issued to the subject(s) and serve as the official notification. (Refer to Appendage IV.)

D. Investigation Procedures: The following procedures shall be followed by individuals conducting personnel investigations:

1. Complaints of physical abuse, discrimination and sexual harassment provide a high potential for liability to the Department and its personnel. Based upon a request from the Office of Chief Counsel, all such complaints shall be investigated immediately to determine the factual circumstances surrounding the complaint in order to assist the Office of Chief Counsel in developing legal theories that can be advanced in defense of any resulting claims and to properly evaluate the potential for liability to which the Department or its members could be exposed. The Office of Chief Counsel shall be provided notice of complaints of this nature by the Director, Internal Affairs Division as soon as possible after receipt.

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2. The Use of Force or Complaint Reception and Processing Worksheet shall be prepared in accordance with this regulation and will serve in place of an incident memo. A BPR Control Number shall be obtained by the Troop Commander/Division Director and entered in Block 1. No incident memo will be prepared, nor will a Troop Incident Number be assigned.
3. Complaints from citizens shall be verified through the completion of the Complaint Verification, Form SP 1-108, Appendage XII. In some cases this would have been accomplished through the use of Appendage XIII by the Bureau of Professional Responsibility by mail prior to assignment. If the verification is not attached to the complaint the investigator shall complete Appendage XII. In doing so, investigators shall request the complainant's signature in the allotted block before the interview.
  - a. If the complainant refuses to sign the form, the investigator shall print "Refused" in the signature block. The complainant shall be informed that such refusal constitutes a withdrawal of their complaint. The investigator shall attempt to complete an interview of the complainant, and shall afterwards confer with the Director, Bureau of Professional Responsibility for a determination on the future course of the investigation. Except in cases of criminal conduct or those which could give rise to court-martial proceedings, as determined by the Department Disciplinary Officer, the investigation shall be terminated with the submission of a limited investigation documenting action taken.
  - b. If travel distance or other circumstances prohibit a personal interview, the investigator shall request assistance from the Bureau of Professional Responsibility in obtaining a completed verification form.

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4. The General Investigation Report shall be used to report full investigations. Correspondence shall be used to report limited investigations.

NOTE: When appropriate, an Initial Crime Report, Form SP 7-004, or Non-Traffic Citation, Form SP 7-0017B shall be prepared and assigned a Troop Incident Number.

5. Personal contact, when practical, shall be made with complainants, witnesses and involved personnel. Anonymous complaints shall not be automatically dismissed. A thorough investigation shall be conducted to independently prove or disprove the allegation. The investigator should make a reasonable effort to determine the identity of anonymous complainants.

NOTE: No administrative action shall be taken against personnel solely on the basis of an unsupported anonymous complaint. In addition, no investigation shall be initiated into anonymous complaints unless a substantiation of the allegation could give rise to formal discipline as determined by the Disciplinary Officer.

6. Personnel who are directly or indirectly associated with a matter under investigation may be directed by the investigating officer or other authority to submit correspondence containing an account of their knowledge and involvement. Such correspondence shall include complete answers to any related questions of the investigator. Absent exigent circumstances, personnel shall be provided 48 hours to submit the correspondence to the investigator or higher authority. Any subsequent requests for additional information may be made by the investigator citing specific questions to be answered. All submitted correspondence shall be included as attachments to the General Investigation Report.
7. The subject of the investigation shall be personally interviewed.
  - a. All related interviews conducted during BPR personnel investigations which allege criminal conduct or

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gross misconduct shall be tape-recorded.

- (1) Prior to beginning an interview which requires tape-recording, the subject shall be informed that their statement will be tape-recorded.
- (2) Personnel, during administrative investigations, have no right to refuse the interview being tape-recorded.
- (3) Individuals not employed by the Department have the right to refuse their interview being tape-recorded.

b. The subject(s) of a taped interview may obtain a copy of the related cassette tape.

- (1) Upon written request to the Director, Bureau of Professional Responsibility, and within 15 working days after the last interview is completed, the subject(s) shall be provided with a copy of their taped interview. Requesting personnel shall immediately provide correspondence encompassing a written receipt. For other than Department personnel, a handwritten receipt is acceptable.
- (2) The subject(s), who is a PSTA member, may simultaneously tape-record the interview being conducted and also be tape-recorded by a member conducting a BPR investigation. At the conclusion of the interview, the subject's cassette tape shall be removed and immediately placed in an envelope by the BPR investigator. The envelope shall then be sealed and the subject directed to place their

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signature, date and time upon the seal. The sealed envelope shall be further enveloped in a postage stamped and addressed mailing envelope provided by the member. The package shall be immediately mailed to the PSTA office where the enclosed envelope will be retained in a sealed condition until notified by BPR that the contents of the interview may be released to the subject(s).

- c. Interviews meeting the criteria set forth in this regulation for tape-recording which have not, for whatever reason, been tape-recorded will be reduced to writing by the investigator, who shall then show the written statement to the subject for their review. The subject will then be requested to sign each page and complete the signature block on the statement's last page. The signature block shall state:

By my signature on this and each of the foregoing \_\_\_\_\_ pages, I hereby adopt the statement contained herein and acknowledge the statement's completeness and veracity.

\_\_\_\_\_ Signature

\_\_\_\_\_ Date

- d. Tape-recorded interviews may be summarized for reporting purposes. The investigator must ensure that the summary is accurate and that the original tape is included as an attachment to the investigative report.
8. All documents and/or reports, or copies thereof, if originals are not available, which have been generated by the investigation shall be collected.

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9. All available investigative tools shall be employed to secure evidence to assist in determining the facts of an investigation. All evidence collected shall be processed in accordance with the procedures outlined in OM 7-7. Examples of investigative tools and evidence to be used in the investigation are as follows:

a. Documents and Records:

- (1) Medical reports - refer to Appendage V.
- (2) Licenses, registrations or any applications.
- (3) Telephone toll records.
- (4) Financial records - refer to Appendage VI.
- (5) Credit Bureau checks.
- (6) Search warrants/affidavits.
- (7) Employment records - refer to Appendage VII.
- (8) Subpoenas.
- (9) Initial Crime Reports.
- (10) Accident Reports.

NOTE: A Request for Criminal Record Check, Form SP 4-164, commonly referred to as a "rap sheet," shall only be included if relevant.

- b. Clothing: Especially important in incidents of shooting or alleged physical abuse.

c. Photographs:

- (1) Victims - physical abuse, shootings, etc.
- (2) Scenes - location of alleged violation.

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- (3) Photo lineups - U.S. v. Wade covers the Supreme Court guidelines associated with lineups. Refer to Appendage XI.
- d. Radio Tapes: These are reused on a 30 or 60-day cycle. It is incumbent upon the investigator to obtain the tape prior to its reuse or erasure.
- e. Sketches: Prepared of scene, if warranted.
- f. Weapons: Ascertain if:
  - (1) Issued/personal.
  - (2) Ammunition - issued/personal.
  - (3) Alterations.
  - (4) Make, model, serial number and caliber.
  - (5) Qualified with weapon - Permanent Firearms Scoring Record, Form SP 8-104.
  - (6) Request to Carry a Personal Handgun on Duty, Form SP 1-600, is completed and on file.
- g. Technical Aids:
  - (1) Laboratory.
    - (a) Ballistics Section.
    - (b) Chemistry Section.
    - (c) Documents Section.
    - (d) Photographic Section.
    - (e) Latent Print Section.
    - (f) Automated Fingerprint Identification System Section.
  - (2) Polygraph.

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(3) Helicopter.

(4) Scuba Teams.

10. Personal property of personnel is not subject to search and seizure for administrative work-related investigations without reasonable suspicion. Probable cause and/or a search warrant, as required by law, are necessary to search and seize the personal property for criminal investigative purposes. However, Department property may be searched at any time, even if assigned to or used exclusively by a single individual. This search may be conducted by any authorized person pursuant to an investigation.
11. At no time will recommendations be offered as to the appropriate administrative action to be taken. The investigator shall not express assumptions, personal opinion, or conclusions in the General Investigation Report.
12. The following exceptions to completing a General Investigation Report are necessary when conducting full investigations:
  - a. Block 5 shall read as follows:

Name of Subject Personnel  
Troop/Bureau - Station/Division  
Date of Enlistment/Hiring  
Social Security Number of Subject Personnel

NOTE: Additional subjects shall be entered in the INSTRUCTIONS Block, under the subheading ADDITIONAL SUBJECTS, using the above format.
  - b. The subheadings CONCLUSION, and RECOMMENDATION and COMMENT in Block 6 shall not be included when the report is used for administrative investigation purposes.
  - c. All attachments shall be consecutively numbered under the subheading, LIST OF ATTACHMENTS. Each attachment shall be numbered, along the lower right corner to correspond with this list. In the format of: Attachment No. \_\_\_\_\_,

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Page \_\_\_\_\_ of \_\_\_\_\_. The Use of Force or Complaint Reception and Processing Worksheet shall always be Attachment Number 1. Attachments to supplemental General Investigation Reports shall continue consecutively from the last attachment number in the original report.

- d. No references to race/ethnicity shall be included when identifying interviewees, unless relevant to the issue under investigation.
- 13. When the facts of an investigation indicate that a Report of Incident/Accident, Form STD-430, shall be submitted according to AR 4-12, it shall be submitted directly to the Director, Bureau of Staff Services, and noted in the details section of the report. A copy shall not be made an attachment to the General Investigation Report.
- 14. Department directives, contract/agreement provisions, the Pennsylvania Rules of Criminal Procedure and statutes shall be strictly adhered to while conducting investigation(s).
- 15. Individuals under investigation shall be advised of their Constitutional Rights, which may apply during the investigation.
- 16. The investigation shall be completed and all reports shall be received by the Director, Bureau of Professional Responsibility within 30 days after assignment, unless another time period is specified by the Director. It is important for the assigned investigator to complete the investigation and submit the report promptly.

E. Investigation of Non-Complaint Incidents:

- 1. Incidents involving legal intervention, shooting or use of physical force, provide a high potential for liability to the Department and its personnel. Based on a request from the Office of Chief Counsel, in all such incidents an immediate investigation shall be conducted into the factual circumstances surrounding the incident in order to assist the Office of Chief Counsel in developing legal theories that can be advanced in defense

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of any resulting claims and to properly evaluate the potential for liability to which the Department or its members could be exposed. The Office of Chief Counsel shall be provided notice of the above-referenced types of incidents by the Director, Internal Affairs Division as soon as possible after their occurrence.

2. The involved member(s)/enforcement officer(s) shall immediately notify, through the chain of command, the Troop Commander responsible for the area in which the incident occurred. For a member not under their command, the Troop Commander shall notify the member's Troop Commander, Division Director; and, if on detached status, the member's current Troop Commander/Division Director shall also be notified. For Enforcement Officers, the Troop Commander shall notify the Director, Operations Division, Bureau of Liquor Control Enforcement. If serious injury or death occurred to an individual, the Troop Commander shall immediately notify the Deputy Commissioner of Operations, through the chain of command, if possible. The Troop Commander shall also provide immediate notification to the Bureau of Professional Responsibility, in accordance with Department directives, in all shooting/physical force incidents.
3. In those incidents requiring immediate response, the Troop Commander shall ensure that a supervisor who is not directly involved in the incident is immediately assigned to secure the scene of the incident. The assigned supervisor shall initiate a preliminary investigation, pending assignment of a principal investigator, who shall be selected through concurrence with the Director, Bureau of Professional Responsibility.
4. If the use of physical force results in injury which requires medical treatment to personnel only, and no other investigative criteria applies, an administrative investigation is not required.
5. Any member/enforcement officer, who discharges a weapon which results in an injury or death, or whose use of physical force results in a death, shall immediately be assigned to

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Station/Office duties, pending an evaluation of the circumstances surrounding the incident by the Deputy Commissioner of Administration. In addition, any member/enforcement officer whose use of physical force results in an injury may, at the discretion of the Deputy Commissioner of Administration, be assigned to Station/Office duties pending evaluation of the circumstances surrounding the incident. For those incidents in which responsibility cannot be immediately determined, all members/enforcement officers directly involved in the incident shall be placed in this status, where appropriate. This action is not to be construed as disciplinary in nature.

6. Whenever a member/enforcement officer is directly involved in a shooting incident which results in injury or death:
  - a. The assigned criminal investigator and BPR investigator shall interview the involved personnel, as soon as possible.
  - b. The Troop Commander/Bureau Director shall ensure that the Member Assistance Program Office Manager is notified immediately.
  - c. The member's/enforcement officer's Troop Commander/Bureau Director, in conjunction with the Manager, Member Assistance Program, shall, as soon as possible, but not more than 72 hours after the incident, arrange for the affected member(s)/enforcement officer(s) to receive appropriate professional counseling. This shall not preclude professional counseling of members/enforcement officers involved in shooting incidents not resulting in injury or death or in other use of physical force incidents. In addition, the Troop Commander/Bureau Director, in conjunction with the Manager, Member Assistance Program, shall ensure appropriate professional counseling is provided to any personnel, e.g., Police Communications Operators, supervisors, etc., indirectly

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involved with and adversely affected by an incident.

- d. The Troop Commander/Bureau Director shall ensure the PSTA President is notified, as soon as possible in those incidents involving members.
7. During the investigation of a shooting incident, it may be necessary for the investigator to take possession of a member's/enforcement officer's weapon. The Troop Commander/Division Director shall make arrangements for immediate replacement of the weapon.
8. Release of a member's/enforcement officer's name to the news media shall be coordinated through the Public Information Office.
9. An investigation of a non-complaint incident is not required for the following shooting incidents:
  - a. Firearms training/qualification.
  - b. A member/enforcement officer discharging a weapon while off duty as permitted by law for purposes such as hunting, fishing, target shooting, etc.
  - c. When a member destroys an animal in accordance with the provisions of FR 7-3.
10. During the investigation of a non-complaint incident, the investigator shall exercise discretion in determining if an aggrieved citizen should be interviewed. This does not apply to instances where the citizen initiates the complaint and alleges physical abuse.

F. Limited Investigations:

1. A limited investigation may be conducted when a requirement under the definition of "Limited Investigation" is met. In addition, a limited investigation may be conducted when the Troop Commander/Division Director and the Director, Bureau of Professional Responsibility concur that a full investigation is not warranted due to mitigating circumstances. A BPR Control

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- Number and investigator shall be assigned to all limited investigations.
2. Limited investigations shall be prepared on correspondence directed to the investigator's Troop Commander/Bureau Director.
    - a. Limited investigations should include a synopsis of the allegations. Enclosures may include:
      - (1) Information from involved personnel submitted correspondence.
      - (2) Copies of pertinent investigative reports.
      - (3) Any other documents which are relevant to the investigation.
      - (4) Notification of Inquiry issued to involved personnel.
    - b. Investigator's assessment as to why this investigation should be handled on a limited basis, as defined in Section 25.04 I.
  3. Upon completion of a limited investigation, the Troop Commander/Division Director shall prepare an endorsement, citing reasons for their decision and a notation that the complainant and involved personnel were notified of this decision. The endorsement shall also include a statement of the disposition using one of the defined categories listed in Section 25.07, excluding the categories "Sustained" or "Not-Sustained." The limited investigation must be converted into a full investigation if any element of misconduct is determined.
  4. Troop Commanders/Division Directors shall forward the endorsed, limited investigation, through channels, to the Director, Bureau of Professional Responsibility. If, during the review process, a determination is made that the facts contained in the limited investigation are insufficient to support the final disposition, the report may be returned to the Troop Commander/Division Director

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directing that the investigator conduct a full investigation. If a limited investigation is returned under these circumstances, all prior notifications to the complainant and involved personnel shall be deemed to be void.

G. Submission of Internal Investigation Reports for Full Investigations:

1. All applicable General Investigation Reports shall be forwarded directly, in duplicate, to the Director, Bureau of Professional Responsibility, by the assigned investigator.
2. After reviewing the report for investigative content, the Director, Bureau of Professional Responsibility, shall either forward it to the Deputy Commissioner of Administration for further processing or return it to the investigator for additional investigation. A copy of the investigative reports on incidents involving legal intervention, shooting, use of physical force, or complaints of physical abuse, discrimination, or sexual harassment shall be forwarded to the Office of Chief Counsel for evaluation at the time the report is forwarded to the Deputy Commissioner of Administration.
3. The Deputy Commissioner of Administration or designee shall forward the investigative report to the appropriate Area Commander/Bureau Director, who shall review and forward it to the Troop Commander/Division Director. In cases which appear to warrant the issuance of a DAR, the Area Commander/Bureau Director shall ensure consultation with the Troop Commander/Division Director prior to an administrative decision being made. An administrative decision shall be formulated by the Troop Commander/Division Director and communicated to the subject(s) of the investigation in a timely manner.
  - a. If the investigation involves a member and a DAR will be issued, the provisions of FR 3-3 apply.
  - b. If disciplinary action will be taken against an employee, the provisions of AR 4-9 apply.

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4. The investigative report shall be returned, through channels, to the Deputy Commissioner of Administration, by the appropriate Troop Commander/Division Director, after they have completed their supplement report of the General Investigation Report and detailed their administrative decision. The supplement report shall, at a minimum, contain the following:
  - a. A statement of the disposition using one of the defined categories listed in Section 25.07. If there is more than one element to the allegation and the dispositions differ, each element must be individually addressed. Allegations in the categories Verbal Abuse or Dissatisfaction with Performance of Duty that are disposed of as unfounded or not sustained may be satisfactorily addressed by simply stating the appropriate disposition with no explanation necessary.
  - b. Except as exempted in the above section, a statement on those mitigating or aggravating circumstances that influenced the dispositional decision.
  - c. A statement that notification regarding the disposition of the complaint was made to the subject and the complainant. The method used to notify the complainant must be stated.
  - d. When a DAR is issued, the detailed summary provided to the involved member shall be included as an attachment.
5. The Deputy Commissioner of Administration shall forward all reports to the Director, Bureau of Professional Responsibility, for further action or filing.
6. The central location for the collection and maintenance of all administrative investigation information shall be the Bureau of Professional Responsibility, Internal Affairs Division. All personnel investigations are of

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a confidential nature and may be reviewed only upon authorization of the Commissioner/designee.

7. General Investigation Reports and limited investigation reports shall be purged after ten years, or two years after the member/employee separates, unless litigation warrants retention.

25.11 INTERNAL AFFAIRS DIVISION PERSONNEL

- A. Selection: Staffing an Internal Affairs Division is an important factor in the success or failure of the Division. To be considered for assignment in the Internal Affairs Division, members must:
  1. Be volunteers.
  2. Have demonstrated that they possess a high degree of investigative skill and the ability to write clear, concise and complete investigative reports.
  3. Have an excellent reputation, among both their peers and supervisors, in terms of integrity and overall performance as members.
  4. Be familiar with those statutes, collective bargaining agreements, and Department directives, policies and procedures which are related to administrative investigations.
  5. Have a thorough knowledge in the collection and preservation of evidence.
  6. Should have knowledge of the availability of records and information maintained by other sources and agencies.
  7. Should possess the ability to perform photographic surveillance and possess or be willing to acquire the proper certification required to perform electronic surveillance.
  8. Should be in good physical condition and present a professional appearance.
  9. Should be able to interact effectively with people and be proficient in interviewing and interrogation techniques.

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- B. Tenure: It is a generally accepted practice to periodically rotate members assigned to an Internal Affairs Division. This rotation process will assure the infusion of new personnel and new ideas, and allow greater member participation. The investigator positions within the Division shall be posted in accordance with AR 4-20. Investigators shall serve for a period of time to be determined by the Commissioner.

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## APPENDAGE I

USE OF FORCE OR COMPLAINT RECEPTION AND PROCESSING WORKSHEET  
FORM SP 1-101

- A. **PURPOSE:** This form is used to provide a uniform method of receiving and recording complaints against personnel and recording incidents for non-complaint investigations.
- B. **PREPARATION:** This form shall be printed with ballpoint pen or typewritten, in original only, by the individual receiving the complaint.
- C. **BLOCK INSTRUCTIONS:**
1. **BPR CONTROL NUMBER:** To be obtained by the Troop Commander/Division Director from the Director, Bureau of Professional Responsibility.
  2. **COMPLAINANT INFORMATION:** This section is for recording the vital information regarding the individual making the complaint. Personnel shall not place their names in this section unless they are the actual complainant. When personnel receive information from an outside source, that source shall be noted in this section. For non-complaint investigations and anonymous complaints, this section shall be left blank.
  3. **NON-COMPLAINT USE OF FORCE REPORT:** Check the appropriate box.
  4. **SUBJECT OF ALLEGATION/REPORT:** Self-explanatory.
  5. **DETAILS OF ALLEGATION:**
    - a. **ROUTE/STREET:** Self-explanatory.
    - b. **CITY/TWP/BORO:** Self-explanatory.
    - c. **COUNTY:** Self-explanatory.
    - d. **DATE:** Self-explanatory.
    - e. **TIME:** Self-explanatory.
    - f. **DAY:** Self-explanatory.
    - g. **TYPE OF ALLEGATION:** Refer to Section 25.05. Check the appropriate box.

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- h. SYNOPSIS: A brief explanation of what the complaint alleges or what occurred during a non-complaint incident is sufficient.
- 6. RECEPTION DATA:
  - a. DATE RECEIVED: Self-explanatory.
  - b. TIME RECEIVED: Self-explanatory.
  - c. LOCATION RECEIVED: Self-explanatory.
  - d. RECEIVED BY: The name of the individual who initially receives the details of the allegation from the complainant shall be recorded here. Do not advise complainants to call back later to speak to a supervisor.
- 7. FOR BUREAU USE: This space shall be used only by the Bureau of Professional Responsibility.
- 8. ADDITIONAL SUBJECTS OF ALLEGATION/REPORT: Self-explanatory.
- D. DISTRIBUTION WHEN A COMPLAINT IS RECEIVED AT A TROOP/BUREAU LOCATION:
  - 1. Personnel Receiving Complaint - Forward through channels to the individual's Troop Commander/Division Director by the most expedient means possible. If the complaint involves an individual in the chain of command, the individual may be bypassed when submitting the Worksheet through channels.
  - 2. Troop Commander/Division Director - The Troop Commander/Division Director, after reviewing the Worksheet, shall assess if a full or limited investigation is appropriate.
    - a. The Director, Bureau of Professional Responsibility or a designee shall then be contacted by telephone for concurrence. At this time, a BPR Control Number will be assigned and recorded in the Bureau Register. An investigator will also be assigned.
      - (1) If the decision is made for the investigation to be conducted by Troop/Bureau members, the Worksheet shall be forwarded to the investigating officer for inclusion as the first attachment to the General Investigation Report.

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- (2) If the decision is made for the investigation to be conducted by a member of the Internal Affairs Division, the Worksheet shall be immediately forwarded to the Director, Bureau of Professional Responsibility. It will then be forwarded to the Internal Affairs Division investigator for attachment to the General Investigation Report.
- b. Upon receipt of a nonwritten complaint which alleges dissatisfaction with performance of duty or verbal abuse, the Troop Commander/Division Director shall immediately contact the Director, Bureau of Professional Responsibility to discuss the details of the allegation. When appropriate, the Director, Bureau of Professional Responsibility may elect to proceed by forwarding a Complaint Verification, Form SP 1-108, to the complainant requesting more specific information about the allegation, before initiating an investigation. In such cases, the Troop Commander/Division Director shall forward the original Worksheet to the Bureau of Professional Responsibility and retain a copy in a chronological file at the Troop/Bureau for 60 days, after which the Worksheet shall be purged.
- c. The original Worksheet shall be retained in an active file at the Bureau of Professional Responsibility for 30 days, following the mailing of the Complaint Verification Form. Failure of the complainant to complete and return the Complaint Verification Form within 30 days will result in termination of the complaint and transfer of the original Worksheet to an inactive file. Completed Complaint Verification Forms shall be evaluated by the Director, Bureau of Professional Responsibility to determine if an investigation is warranted.
3. It may be determined by the Director, Bureau of Professional Responsibility that action other than an investigation is appropriate; in such cases the Worksheet shall be forwarded to the Director, Bureau of Professional Responsibility with related cover correspondence.

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- E. DISTRIBUTION WHEN A COMPLAINT IS RECEIVED BY THE BUREAU OF PROFESSIONAL RESPONSIBILITY:
1. When it is determined that the investigation shall be conducted by a member of the Internal Affairs Division, the Worksheet shall be prepared and forwarded to the assigned Internal Affairs Division investigator for attachment to the General Investigation Report.
  2. When it is determined that the investigation shall be conducted by Troop/Bureau members, the Worksheet shall be prepared and forwarded to the Troop Commander/Division Director of the affected personnel. The assigned investigator shall attach it to the General Investigation Report.
- F. DISTRIBUTION WHEN THE SUBJECT OF THE COMPLAINT IS A MEMBER ASSIGNED TO THE BUREAU OF PROFESSIONAL RESPONSIBILITY: When a complaint is received concerning a member assigned to the Bureau of Professional Responsibility, the Worksheet shall be sent directly, under confidential cover, to the Deputy Commissioner of Administration.

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PENNSYLVANIA STATE POLICE

# **USE OF FORCE OR COMPLAINT RECEPTION AND PROCESSING WORKSHEET**

BPR CONTROL NUMBER

1. AR 4-25  
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**COMPLAINANT INFORMATION**

<b>NAME</b>	FIRST	M.I.	LAST
<b>HOME ADDRESS</b>	STREET/P.O. BOX		
	CITY	STATE	ZIP CODE
<b>EMPLOYER</b>	NAME & ADDRESS		HOME PHONE # ( )
			WORK PHONE # ( )

3. **NON-COMPLAINT USE OF FORCE REPORT** ☐ SHOOTING INCIDENT ☐ PHYSICAL FORCE ☐ LEGAL INTERVENTION

4. **SUBJECT OF ALLEGATION/REPORT (List additional subjects on back)**

<b>NAME</b>	FIRST	M.I.	LAST
<b>LOCATION</b>	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
	SSN	DOE	← TO BE COMPLETED IF KNOWN OR AVAILABLE

5. **DETAILS OF ALLEGATION**

ROUTE/STREET

CITY/TWP/BORO COUNTY DATE TIME DAY

**TYPE OF ALLEGATION (CHECK ONE)**

☐ PHYSICAL ABUSE  
☐ VERBAL ABUSE  
☐ CRIMINAL CONDUCT
 ☐ IMPROPER CONDUCT ON DUTY  
☐ IMPROPER CONDUCT OFF DUTY  
☐ DISSATISFACTION WITH PERFORMANCE OF DUTY

☐ OTHER (Please explain)

**SYNOPSIS**

6. **RECEPTION DATA**

DATE RECEIVED	TIME RECEIVED	LOCATION RECEIVED	TROOP/BUREAU	STATION/DIVISION
RECEIVED BY	NAME	SSN		

7. **FOR BUREAU USE**

INVESTIGATOR	NAME	SSN
CONTROL NO. ISSUED BY	DATE ASSIGNED	DATE DUE
		SP 1-101-A <input type="checkbox"/> LIMITED INVESTIGATION <input type="checkbox"/>

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**8. ADDITIONAL SUBJECTS OF ALLEGATION/REPORT**

<b>NAME</b>	FIRST	M.I.	LAST
<b>LOCATION</b>	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
SSN	— —	DOE	← TO BE COMPLETED IF KNOWN OR AVAILABLE
<b>NAME</b>	FIRST	M.I.	LAST
<b>LOCATION</b>	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
SSN	— —	DOE	← TO BE COMPLETED IF KNOWN OR AVAILABLE
<b>NAME</b>	FIRST	M.I.	LAST
<b>LOCATION</b>	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
SSN	— —	DOE	← TO BE COMPLETED IF KNOWN OR AVAILABLE

**SYNOPSIS  
(CONT.)**

AR 4-25  
9/2/93

## APPENDAGE II

REVIEW OF PERFORMANCE COMPLAINT  
SP 1-101A

- A. PURPOSE: The review of performance complaint is used to:
1. Provide Troop Commanders/Division Directors with a guideline to assist in determining if a member is merely lacking in a performance outside the Department Internal Affairs/Discipline System.
  2. Document action taken in cases of performance inadequacies for future reference in the event of repeated behavior; a basis for progressive discipline; to document/maintain consistency throughout the Department.
- B. BLOCK INSTRUCTIONS: This form shall be printed with ballpoint pen or typewritten, in original only, by the Troop Commander/Division Director reviewing the complaint.
1. SUBJECT AND BPR NUMBER: Self-explanatory.
  2. DATE(S) OCCURRED: Self-explanatory.
  3. DID COMMISSION/OMISSION TAKE PLACE OR BECOME KNOWN TO THE PUBLIC? Check appropriate box.
  4. WAS THE COMMISSION/OMISSION WHOLLY A MATTER OF INTERNAL ADMINISTRATION? Check appropriate box.
  5. WAS THE MEMBER PREVIOUSLY COUNSELED REGARDING SIMILAR BEHAVIOR? IF YES, LIST DATES, CIRCUMSTANCES, AND BY WHOM: This requires review of member's supervisory file and performance evaluation. Check appropriate box. If yes is checked, provide details.
  6. WHAT, IF ANY, EFFECT DID THE MEMBER'S COMMISSION/OMISSION HAVE (E.G. DESTROYED RESPECT FOR THE PENNSYLVANIA STATE POLICE, IMPROPER EXAMPLE FOR OTHERS, ETC.): Self-explanatory. If none, leave blank.
  7. LIST AND IDENTIFY AGGRAVATING AND/OR MITIGATING CIRCUMSTANCES: Self-explanatory.
  8. WAS MEMBER DISCIPLINED WITHIN THE PAST FIVE YEARS REGARDING SIMILAR PERFORMANCE? IF YES, LIST DATES AND PENALTIES: Self-explanatory.
  9. WAS MEMBER PREVIOUSLY GIVEN REMEDIAL TRAINING REGARDING SIMILAR PERFORMANCE? IF YES, LIST DATES AND CIRCUMSTANCES: Self-explanatory.

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10. PRE-ADJUDICATION MEETING WAS HELD? DATE: Self-explanatory. This is to verify whether the Troop Commander/Division Director met with the member for the purpose of determining the validity of a performance inadequacy.
11. ATTENDEES: List the names of any persons, in attendance with the member and their position. Example: Trooper John J. Jones - Troop PSTA Representative.
12. REMARKS: List any pertinent comments made by the parties during the meeting.
13. DETERMINATION: Check appropriate box.
14. DATE MEMBER WAS NOTIFIED OF DETERMINATION: Self-explanatory.
15. DATE COMPLAINANT WAS NOTIFIED OF DETERMINATION: Self-explanatory. Check appropriate box if notification was written or verbal.
16. DISCIPLINARY OFFICER CONTACTED? IF YES, LIST DATE: Self-explanatory.
17. MEMBER COUNSELED? IF YES, LIST DATE: Self-explanatory.
18. DAR/TROOP COMMANDER'S WRITTEN REPRIMAND ISSUED? IF YES, LIST DATE: Self-explanatory.
19. BPR INVESTIGATION INITIATED: Check appropriate box.
20. REMEDIAL TRAINING SCHEDULED? IF YES, LIST DATE(S) AND TYPE: Self-explanatory.
21. REMARKS/DETAILS: Self-explanatory.
22. INITIATING OFFICER, TITLE AND DATE: Self-explanatory.

C. DISTRIBUTION:

1. If a performance inadequacy is founded, the Troop Commander/Division Director shall be responsible for ensuring the preparation and submission of the Review of Performance Complaint. This report shall be appended to the Use of Force or Complaint Reception and Processing Worksheet, Form SP 1-101, and forwarded to the Bureau of Professional Responsibility.
2. The Troop Commander/Division Director shall retain a copy of this report in a supervisory file established for that purpose.

AR 4-25

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SP 1-101A (8-93)

## REVIEW OF PERFORMANCE COMPLAINT

1. SUBJECT

BPR #

2. (S) OCCURRED:

3. DID COMMISSION/OMISSION TAKE PLACE OR BECOME KNOWN TO THE PUBLIC?

☐ YES ☐ NO

4. WAS THE COMMISSION/OMISSION WHOLLY A MATTER OF INTERNAL ADMINISTRATION?

☐ YES ☐ NO5. WAS THE MEMBER PREVIOUSLY COUNSELED REGARDING SIMILAR BEHAVIOR?  
IF YES LIST DATES, CIRCUMSTANCES AND BY WHOM:☐ YES ☐ NO

6. WHAT, IF ANY, EFFECT DID THE MEMBER'S COMMISSION/OMISSION HAVE (E.G. DESTROYED RESPECT FOR THE PENNSYLVANIA STATE POLICE, IMPROPER EXAMPLE FOR OTHERS, ETC.):

7. LIST AND IDENTIFY AGGRAVATING AND/OR MITIGATING CIRCUMSTANCES:

8. WAS MEMBER DISCIPLINED WITHIN THE PAST FIVE YEARS REGARDING SIMILAR PERFORMANCE? IF YES, LIST DATES AND PENALTIES:

☐ YES ☐ NO

9. WAS MEMBER PREVIOUSLY GIVEN REMEDIAL TRAINING REGARDING SIMILAR PERFORMANCE? IF YES, LIST DATES AND CIRCUMSTANCES:

☐ YES ☐ NO

## ADJUDICATION OF PERFORMANCE COMPLAINT

10. PRE-ADJUDICATION MEETING WAS HELD?

DATE:

☐ YES ☐ NO

11. ATTENDEES:

12. REMARKS:

DETERMINATION:

☐ UNFOUNDED ☐ SUSTAINED ☐ NOT SUSTAINED

DATE MEMBER WAS NOTIFIED OF DETERMINATION:

15. DATE COMPLAINANT WAS NOTIFIED OF DETERMINATION:

☐ WRITTEN ☐ VERBAL

AR 4-25

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## ACTION TAKEN

16. DISCIPLINARY OFFICER CONTACTED? IF YES, LIST DATE:

☐ YES ☐ NO

17. MEMBER COUNSELED? IF YES, LIST DATE:

☐ YES ☐ NO

18. DAI/TROOP COMMANDER'S WRITTEN REPRIMAND ISSUED? IF YES, LIST DATE:

☐ YES ☐ NO

19. BPR INVESTIGATION INITIATED?

☐ YES ☐ NO

20. REMEDIAL TRAINING SCHEDULED? IF YES, LIST DATE (S) AND TYPE:

☐ YES ☐ NO

21. REMARKS/DETAILS

22. INITIATING OFFICER

TITLE

DATE

AR 4-25  
9/2/93

APPENDAGE III

Dear:

This will acknowledge receipt of the complaint which you filed with this agency.

You will be contacted by a Department representative in the near future. Any questions you may have concerning your complaint should be directed to the Bureau of Professional Responsibility at (717) 783-5145.

Very truly yours,

Director  
Bureau of Professional Responsibility

AR 4-25

## APPENDAGE IV

SP 1-102 (8-93)

9/2/93

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
NOTIFICATION OF INQUIRY

NOTE: INVESTIGATORS SHALL PREPARE ORIGINAL AND ONE COPY, RETAIN THE ORIGINAL WITH CASE FILE AND PROVIDE COPY TO THE SUBJECT OF INVESTIGATION. ONE OF THE THREE LISTED INVESTIGATION TYPES SHALL BE CHECKED.

BPR

RANK

NAME

TROOP/STATION

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING:

- ☐ A COMPLAINT INVESTIGATION IS BEING CONDUCTED INTO AN INCIDENT IN WHICH YOU ARE ALLEGED TO HAVE BEEN INVOLVED. THE DETAILS OF THE COMPLAINT ARE AS FOLLOWS: (EXPLANATION BELOW)
- ☐ A NON-COMPLAINT INVESTIGATION IS BEING CONDUCTED IN ACCORDANCE WITH DEPARTMENT DIRECTIVES. THE DETAILS OF YOUR INVOLVEMENT ARE AS FOLLOWS: (EXPLANATION BELOW)
- ☐ AN ADMINISTRATIVE INVESTIGATION IS BEING CONDUCTED PURSUANT TO A REQUEST FROM THE OFFICE OF CHIEF COUNSEL. YOUR INVOLVEMENT HAS BEEN IDENTIFIED AS FOLLOWS:

SIGNATURE OF INVESTIGATOR

I ACKNOWLEDGE RECEIPT OF THIS NOTIFICATION AND I AM AWARE OF MY RIGHT TO UNION REPRESENTATION.

SIGNATURE

BADGE/I.D. NO.

SOCIAL SECURITY NO.

DATE

TIME

APPENDAGE V

AR 4-25  
9/2/93

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
AUTHORIZATION TO OBTAIN MEDICAL INFORMATION

I, \_\_\_\_\_, do hereby, voluntarily and without promises or threats of any kind, authorize \_\_\_\_\_, of the Pennsylvania State Police to obtain information from all medical authorities, hospitals, clinics, or physicians who possess any and all records concerning my medical examinations, treatments, and/or hospital/clinic admissions relative to the examination and/or treatment of \_\_\_\_\_.

I further understand that the information obtained is to be used for internal, administrative purposes only and will not be used as evidence against me in any criminal proceeding.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
PRESENT STREET ADDRESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
DATE OF BIRTH

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME

AR 4-25  
9/2/93

APPENDAGE VI

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
AUTHORIZATION TO OBTAIN FINANCIAL INFORMATION

I, \_\_\_\_\_, do hereby, voluntarily and without promises or threats  
any kind, authorize \_\_\_\_\_ of the Pennsylvania State Police to  
obtain and examine my financial records held by any financial institution that possess such records.

I further understand that the information obtained is to be used for internal, administrative purposes only and may not be  
used as evidence against me in any criminal proceeding.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
PRESENT STREET ADDRESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME

APPENDAGE VII

AR 4-25  
9/2/93

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
**AUTHORIZATION TO OBTAIN EMPLOYMENT RECORDS**

I, \_\_\_\_\_, do hereby, voluntarily and without promises or threats of any kind, authorize \_\_\_\_\_ of the Pennsylvania State Police to obtain and examine all records held by my previous employer(s) concerning my employment history and job performance.

I further understand that the information obtained is to be used for internal, administrative purposes only and will not be used against me as evidence in any criminal proceeding.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRESENT STREET ADDRESS

\_\_\_\_\_  
CITY STATE ZIP CODE

\_\_\_\_\_  
DATE TIME

AR 4-25

9/2/93

## APPENDAGE VIII

SP 1-104 (8-93)

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
ADMINISTRATIVE WARNING

Member/Employe \_\_\_\_\_

Interviewer \_\_\_\_\_

BPR Control No. \_\_\_\_\_ Date \_\_\_\_\_

This questioning concerns administrative matters relating to the official business of the Pennsylvania State Police. I am not questioning you for the purpose of instituting a criminal prosecution against you, or for the purpose of securing additional evidence against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates you may be guilty of criminal conduct concerning this allegation, neither your self-incriminating statement nor its fruits will be used against you in a criminal proceeding.

Since this is an administrative matter within the Pennsylvania State Police, you are required to answer questions truthfully and completely or you may be subjected to administrative action. You do have the right to have a union representative with you during such questioning. If during the course of interview, you have reason to believe that your statements could result in administrative action being initiated against you, union representation will be provided upon request.

Do you understand what I have just explained to you? ☐ YES ☐ NODo you have any questions concerning what I have just explained to you? ☐ YES ☐ NO\_\_\_\_\_  
SIGNATURE OF EMPLOYEE/MEMBER\_\_\_\_\_  
DATE\_\_\_\_\_  
SIGNATURE OF INTERVIEWER\_\_\_\_\_  
DATE

APPENDAGE IX

AR 4-25  
9/2/93

PENNSYLVANIA STATE POLICE  
RIGHTS WARNING AND WAIVER NOTICE  
TO PENNSYLVANIA STATE POLICE PERSONNEL

TIME \_\_\_\_\_

DATE \_\_\_\_\_

PLACE \_\_\_\_\_

My name is \_\_\_\_\_ of the Pennsylvania State Police.  
You have an absolute right to remain silent and anything you say can and will be used against you in a court of law. You also have the right to talk to an attorney before and have an attorney present with you during questioning. If you cannot afford to hire an attorney, one will be appointed to represent you without charge before any questioning, if you so desire. If you do decide to answer questions, you may stop any time you wish and you cannot be forced to continue. If you do exercise your right to remain silent, your refusal to answer will not be grounds for administrative action.

WAIVER

I fully understand the statement warning me of my rights, and I am willing to answer questions. I do not want an attorney and I understand that I may stop answering questions anytime during the questioning. No promises have been made to me, nor have I been threatened in any manner. I also understand that my refusal to answer questions will not be grounds for administrative action.

\_\_\_\_\_  
SIGNATURE

WITNESS:

S/ \_\_\_\_\_

S/ \_\_\_\_\_

AR 4-25  
9/2/93

APPENDAGE X

Garrity v. New Jersey, 87 S.Ct. 616, 385 U.S. 493, 17 L.Ed. 2d 562 (1967)

This case involved a situation where police officers who were being criminally investigated were given a choice to either incriminate themselves or forfeit their jobs under a state (New Jersey) statute dealing with forfeiture of office, tenure and pension rights by public employees who refuse to testify on grounds of self-incrimination. The officers chose to make confessions. However, the Supreme Court of the United States held the confessions were not voluntary, but were coerced. The court said that the option to lose their means of livelihood or to pay the penalty of self-incrimination is in direct contrast of free choice to speak out or to remain silent. That practice, the court said, is likely to exert such pressure upon an individual as to disable him from making a free and rationale choice. The protection of an individual under the Fourteenth Amendment against coerced statements prohibits the use of these statements, obtained under threat of removal from office, in subsequent criminal proceedings.

In summary, Garrity held that public employee statements that are induced by threat of dismissal or other discipline may not be used in a subsequent criminal prosecution.

AR 4-25  
9/2/93

## APPENDAGE XII

COMPLAINT VERIFICATION  
FORM SP 1-108

- A. **PURPOSE:** The Complaint Verification provides a complainant with the opportunity to directly lodge a complaint with the Department in writing and on an official form. It also serves to formally involve a complainant as a party in our complaint process.
- B. **POLICY:** The form shall be used to verify citizen complaints that have not already been articulated in writing and properly signed by the complainant. The form may be used for other type complaints with the approval of the Director, Bureau of Professional Responsibility.
- C. **PREPARATION:** The verification form will only be employed by an investigator assigned a BPR investigation or of the Bureau of Professional Responsibility.
1. Except as outlined in paragraph 2. below, the verification form shall be completed by the assigned investigator. The allegations shall be recorded from the complaint worksheet or from the complainant's present account. The form shall then be presented to the complainant for review and signing. A copy of the completed form may be mailed to the complainant by the investigator upon request. If travel distance or other circumstances preclude personal contact with a complainant, the investigator shall request that the verification form be sent by the Bureau of Professional Responsibility.
  2. The form will be mailed by the Bureau of Professional Responsibility to the complainant under the following circumstances:
    - a. When the Director, Bureau of Professional Responsibility determines that an investigation would most likely not be conducted if the complainant failed to return a completed verification form.
    - b. At other times, with the approval of the Director, Bureau of Professional Responsibility.

AR 4-25  
9/2/93

D. BLOCK INSTRUCTIONS:

1. NAME: Self-explanatory.
2. HOME ADDRESS: Self-explanatory.
3. REMARKS: The complainant's allegations will be detailed under remarks. When the form is completed by the investigator, the allegations may be recorded from the complaint worksheet or as related by the complainant.
4. SIGNATURE: Self-explanatory.
5. DATE: Self-explanatory.

## APPENDAGE XI

U.S. v. Wade, 87 S. Ct. 1926, 388 U.S. 218, 18 L.Ed. 2d 1149 (1967)

The question addressed in this case was whether courtroom identifications of an accused at trial are to be excluded from evidence because the accused was exhibited to the witnesses before trial at a post indictment lineup conducted for identification purposes without notice to and in the absence of the accused's appointed counsel. The Supreme Court of the United States held that compelling the accused merely to exhibit his person for observation by a prosecution witness prior to trial involves no compulsion of the accused to give evidence, and was no violation of Wade's privilege against self-incrimination. However, the courtroom identification should have been excluded because the lineup was conducted without notice to and in the absence of counsel. The principle followed is that, in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial. The security of that right is as much the aid of the right to counsel as it is of the other guarantees of the Sixth Amendment.

In summary, Wade held that pretrial lineups constitute a critical step in the prosecutive process such that every individual has a right to counsel at such proceedings.

COMMONWEALTH OF PENNSYLVANIA  
**PENNSYLVANIA STATE POLICE**  
**COMPLAINT VERIFICATION**

AR 4-25  
 9/2/93

BPR CONTROL NUMBER

**COMPLAINANT INFORMATION**

1.	<b>NAME</b>	FIRST	M.I.	LAST
2.	<b>HOME ADDRESS</b>	STREET/P.O. BOX		
CITY				
STATE		ZIP	HOME PHONE # ( )	WORK PHONE # ( )

3. **REMARKS:** PROVIDE A DETAILED NARRATIVE OF THE INCIDENT. IF THE COMPLAINT INVOLVES VERBAL ABUSE OR RUDENESS STATE THE SPECIFIC TERM, PHRASE, OR LANGUAGE CONSIDERED TO BE OFFENSIVE. IF THE COMPLAINT CONCERNS DISSATISFACTION WITH AN INVESTIGATION OR OTHER POLICE SERVICE, EXPLAIN WHAT ACTION OR OMISSION WAS UNACCEPTABLE. IF ADDITIONAL SPACE IS NEEDED USE THE REVERSE SIDE.

I AFFIRM THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION OR BELIEF.

SIGNATURE

XII-3

S. DATE



AR 4-25  
9/2/93

## APPENDAGE XIII

Dear:

The preliminary personnel complaint you filed with the Pennsylvania State Police has been referred to the Bureau of Professional Responsibility for processing. To initiate an investigation, you must complete and return the enclosed Complaint Verification Form within thirty (30) days. Failure to return the completed verification form signed and within thirty (30) days will result in the termination of your complaint.

When completing Block 3, "Remarks," consider the following issues: Where did the incident occur? Give a location to the best of your knowledge and ability. When did the incident take place? Note the date, day of week and time, if possible. Who was present when the incident happened? List names, addresses and telephone numbers, if known. What are the details of the incident? Begin with your initial contact and give a detailed account of the events surrounding your complaint. If the allegation is verbal abuse or rudeness, please state the specific term, phrase or language that you considered offensive. An allegation such as "poor attitude" is not definite enough to permit a determination as to any wrongdoing having occurred. Complaints that indicate displeasure with service rendered by State Police personnel should also indicate a specific instance or instances of lack of action or unacceptable action. Merely disagreeing with the result of an action taken is not basis for a complaint.

Please be aware that your complaint will have no impact on cases before a court of law. If an arrest is at issue, proper redress is found through the judicial system and should be pursued there.

Upon our receipt of the completed verification form, you will be notified of the action to follow.

Any questions you may have concerning your complaint should be directed to the Bureau of Professional Responsibility, at (717) 783-5145.

Very truly yours,

Director  
Bureau of Professional Responsibility

LT BROWN

**1998 - 2000**

**PROVISIONS FROM BOARDS  
OF ARBITRATION AWARDS  
AND  
COLLECTIVE BARGAINING AGREEMENTS  
BETWEEN  
COMMONWEALTH OF PENNSYLVANIA  
AND  
THE PENNSYLVANIA STATE TROOPERS  
ASSOCIATION  
EFFECTIVE JULY 1, 1998 TO JUNE 30, 2000**

**Distributed by:  
Pennsylvania State Police  
Bureau of Personnel  
Labor Relations Section  
Harrisburg, PA 17110  
Phone 717-783-5547**

b. Unresolved grievances shall be presented to a tripartite panel consisting of an arbitrator appointed by each party and a neutral arbitrator as Chairperson as established in Article 28, Grievance Procedure.

c. The decision of the arbitrator shall be final and binding on both parties.

d. Grievances which are pending and ready for a hearing shall be scheduled monthly for the purpose of adjusting grievances under this section.

e. Grievances that need to be scheduled for arbitration shall be scheduled independent of other scheduled grievances.

Section 11. It is understood that the provisions of this Article are not applicable to Commissioned Officers.

## ARTICLE 38 TRANSFERS

Section 1. If a member is transferred not at his/her request, on a temporary transfer (less than six months) and he/she is not provided transportation, he/she shall receive a travel allowance equal to the IRS rate applicable in Pennsylvania for all miles in excess of fifty miles (driven miles) per day from his/her place of residence to his/her station and return.

Section 2. If a permanent involuntary transfer results in a subsequent involuntary transfer (the permanent transfer lasting for less than six months) the above allowance shall be applicable retroactively to the member.

Section 3. When an involuntary intratroop transfer must be made, the member to be transferred must be the member who has the least seniority in his/her rank in that station (provided he/she has not been moved involuntarily in the previous six months) except in cases of promotion, in conjunction with the imposition of discipline or where there is a need for special skills or specialty.

When the least senior member is transferred under this section, the Department shall not be required to consider the seniority of any member concurrently or subsequently transferred into that station.

#### ARTICLE 39 BADGE

Section 1. The Commonwealth shall provide each member who retires under one of the following conditions with his/her badge at no cost to the member:

- a. Superannuation retirement (age 50)
- b. Retirement with 25 years of service
- c. Service-connected disability retirement

Section 2. Any member who, at the time of retirement, has been found guilty of criminal charges resulting from the performance of his/her duties or who has had Court-Martial proceedings instituted against him/her shall be excepted from the provisions set forth in Section 1 above.

Section 3. Unless such investigation involves allegations of criminal misconduct, no member shall be denied his badge under the circumstances set forth above as a result of a pending BPR investigation.

#### ARTICLE 40 CAR UTILIZATION STUDY

The seven-member committee which was appointed by the Pennsylvania State Troopers Association to meet periodically with the State Police Administration to discuss the feasibility of developing a program to permit State Police officers to use State Police vehicles during off-duty hours shall continue during the term of this Agreement.

OM 7-9  
5/8/98

## CHAPTER 3

## PROMOTIONS - SECONDARY CRITERIA

## A. PURPOSE

This regulation defines the secondary criteria to be utilized in making Corporal, Sergeant, Lieutenant, Captain, and Major promotions from within bands on the promotional eligibility lists.

## B. BANDING

As recommended by an Expert Panel of Industrial Psychologists, the Department will employ the use of banding beginning with the 1997 Promotional Eligibility Lists for Corporal, Sergeant, and Lieutenant. All candidates within a band are deemed to be equivalent with respect to test score.

## C. SECONDARY CRITERIA

The Pennsylvania State Police, the Bolden Plaintiffs, and the Pennsylvania State Troopers Association have agreed upon the following secondary criteria (Refer to Appendage B):

1. Corporals: Total job seniority up to 180 months with random numbers to break ties.
2. Sergeants: Total job seniority up to 180 months with random numbers to break ties.
3. Lieutenants: Commissioner's discretion to consider the following factors:
  - a. Time in grade as Corporal and Sergeant.
  - b. Discipline or commendations with a one-year limitation on discipline consideration at time of the promotion review.
  - c. Founded BPRs within two years of the promotion review.
  - d. Annual performance evaluations limited to the two most recent evaluations at time of promotion review.

OM 7-9  
5/8/98

- e. Evaluation of the position to be filled and the relational suitability of the candidate.

D. JOB SENIORITY

Total job seniority for Corporals and Sergeants is defined by the member's enlistment date and will be calculated in number of months from enlistment date to the date the promotional eligibility list is established, with a maximum of 180 months.

E. RANDOM NUMBERS

Random numbers will be used to break ties in seniority within a band. The random number is a six-digit number assigned to every member who is eligible to participate in the promotion examination process. Random numbers will be issued prior to the administration of the examinations and will also be included on individual examination results notices. The highest number is given first priority.

F. CORPORAL AND SERGEANT ELIGIBILITY LISTS

The official State Police Corporal and Sergeant eligibility lists will be established by score bands in seniority order. Members will be placed in top-down random number order where seniority is tied. Promotions will be offered from the lists in that order.

G. LIEUTENANT ELIGIBILITY LIST

The official State Police Lieutenant eligibility list will be established alphabetically within each score band. Promotions will be offered in accordance with the procedures outlined above.

H. CAPTAIN AND MAJOR PROMOTIONS

At the discretion of the Commissioner, promotions to the ranks of Captain and Major shall be made on an as-needed basis from those candidates appearing in the top band of the eligibility list.

OM 7-9  
5/8/98

I. PROMOTION OFFERS

Promotion offers must have been made to all members in a band before moving to the next lower band. During subsequent rounds of promotions, members in the top band of the Corporal and Sergeant eligibility lists who have declined an offer of promotion shall continue to be offered vacant field positions prior to extending such offers to members in the next lower band. If the situation arises on the Lieutenant eligibility list that a member remains in a band by virtue of declining a promotion offer and promotion offers have been initiated in the next lower band, said member shall be given priority consideration by the Commissioner in accordance with the procedures outlined above.

CAPTAIN DARRELL OBER

\* IN THE

Petitioner,

\* COMMONWEALTH COURT

vs.

\* OF

COLONEL PAUL EVANKO, et. al.

\* PENNSYLVANIA

Respondents.

\* Case No. 35MD2000

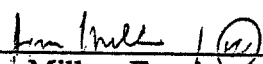
\* \* \* \* \*

**PETITIONER'S MOTION TO WITHDRAW  
 PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION AND  
 PETITIONER'S MOTION TO WITHDRAW  
 PETITIONER'S REQUEST FOR EXPEDITED HEARING**

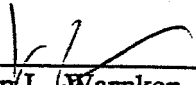
Petitioner, Captain Darrell Ober (Captain Ober), by and through his attorneys, John Miller, Esq., Byron L. Warnken, Esq., James A. Lanier, Esq., hereby withdraw: (1) Petitioner's Motion for Preliminary Injunction and (2) Petitioner's Request for Expedited Hearing.

The Respondents have stipulated to the injunctive relief sought by Captain Ober in his Motion for Preliminary Injunction, thereby making the need for a preliminary injunction hearing and the need for an expedited hearing moot. The Respondents have agreed to maintain this stipulation until the Court rules upon Captain Ober's Application for a Writ of Mandamus. This stipulation is attached at Appendix A.

This motion to withdrawal in no way affects Petitioner's Application for Writ of Mandamus.

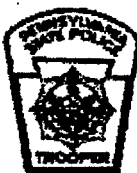
  
 \_\_\_\_\_  
 John Miller, Esquire  
 7 West Main Street  
 P.O. Box 27  
 Fawn Grove, Pennsylvania 17321

Bar No. 50033

  
Byron L. Warnken, Esquire  
James A. Lanier, Esquire  
32 East Preston Street  
Baltimore, Maryland 21202-2727

Attorneys for Petitioner Ober.

January 27, 2000



PENNSYLVANIA STATE POLICE  
DEPARTMENT HEADQUARTERS  
1800 ELMERTON AVENUE  
HARRISBURG, PA. 17110  
Office of Chief Counsel  
(717) 783-5568

January 27, 2000

FAXED AND SENT FIRST CLASS MAIL

Mr. Byron L. Warnken, Esquire  
32 East Preston Street  
Baltimore, MD 21202-2727

RE: Ober v. Evanko and Pennsylvania State Police (Commonwealth Court of Pennsylvania)

Dear Mr. Warnken:

Pursuant to our conversation, this confirms that we will suspend the transfer of Captain Ober in exchange for your withdrawal of the motion for a preliminary injunction.

We agree to return Captain Ober to the IIMS (Integrated Incident Management System) position he served in prior to the transfer, in the Bureau of Technology Services, under the supervision of Major Wesley Waugh. We agree also not to transfer Captain Ober outside the Harrisburg/Hershey area until such time as the instant litigation is resolved either in our favor or your favor; however, we reserve the right to transfer Captain Ober to other existing positions in this area, that meet the operational needs of the Department, during the pendency of the litigation. (This agreement would not extend to any appeal from a Commonwealth Court determination).

This suspension of transfer will not affect the Department's intent to proceed forward with the mandamus action nor does it waive or limit any arguments that we may raise in this action, but it will obviate the need for the preliminary injunction hearing scheduled for tomorrow.

I assume that you will be cancelling the preliminary injunction hearing scheduled for tomorrow in Philadelphia - please fax me a copy of whatever document you file with the court that accomplishes this.

Very Truly Yours,

Joanna N. Reynolds

A



**CAPTAIN DARRELL OBER**

**Petitioner,**

**v.**

**COLONEL PAUL EVANKO, et. al.**

**Respondents.**

\* \* \* \* \*

\* **IN THE**  
\* **COMMONWEALTH COURT**  
\* **OF**  
\* **PENNSYLVANIA**  
\* **Case No. 35MD2000**

**ORDER GRANTING PETITIONER'S MOTION TO WITHDRAW  
PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION AND  
PETITIONER'S MOTION TO WITHDRAW  
PETITIONER'S REQUEST FOR EXPEDITED HEARING**

Having reviewed Petitioner's Motion to Withdraw Petitioner's Motion for Preliminary Injunction and Petitioner's Motion to Withdraw Petitioner's Request for Expedited Hearing, and any Response filed by the Respondents, this Court hereby issues, this \_\_\_\_ day of January, 2000, that:

1. Petitioner's Motion for Preliminary Injunction be dismissed as moot in light of the stipulation by Respondents;
2. Petitioner's Motion for Expedited Hearing be dismissed as moot in light of the stipulation by Respondents;
3. Petitioner's Application for Writ of Mandamus be set on the docket in the ordinary course of business.

\_\_\_\_\_  
Judge

**CAPTAIN DARRELL OBER**

**Petitioner,**

**vs.**

**COLONEL PAUL EVANKO, et. al.**

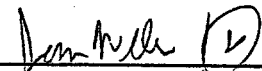
**Respondents.**

\* **IN THE**  
\* **COMMONWEALTH COURT**  
\* **OF**  
\* **PENNSYLVANIA**  
\* **Case No. 35MD2000**

\* \* \* \* \*

**CERTIFICATE OF SERVICE**

This is to certify that one copy of (1) Petitioner's Motion to Withdraw Petitioner's Motion for Preliminary Injunction and Petitioner's Motion to Withdraw Petitioner's Request for Expedited Hearing; and (2) a certificate of service in the above-caption matter was mailed, first class, postage prepaid, this 27<sup>th</sup> day of January, 2000, to: Joanna N. Reynolds, Esq., Office of Chief Counsel, Pennsylvania State Police Department Headquarters, 1800 Elmerton Avenue, Harrisburg Pennsylvania 17109.

  
\_\_\_\_\_  
John Miller, Esquire  
7 West Main Street  
P.O. Box 27  
Fawn Grove, Pennsylvania 17321

Bar No. 50033

Attorney for Petitioner Ober



PENNSYLVANIA STATE POLICE  
DEPARTMENT HEADQUARTERS  
1800 ELMERTON AVENUE  
HARRISBURG, PA. 17110

85-198  
Special Order  
December 23, 1985

36

SUBJECT: Bureau of Professional Responsibility/  
Internal Affairs Division

TO: Area, Troop and Station Commanders  
and Bureau Directors

FROM: Commissioner

REFERENCE: (a) Special Order 85-179 dated November 29, 1985

ENCLOSURE: (1) INTERNAL AFFAIRS DIVISION

1. Enclosure (1) becomes effective on January 23, 1986. It establishes policies and procedures to initiate, conduct and/or control all necessary investigations, and to process all complaints or allegations of misconduct by Department personnel.

2. An initial supply of the Complaint Reception and Processing Worksheet, Form SP 1-101 (12-85); Pennsylvania State Police Personnel Rights Warning and Waiver, Form SP 1-103 (12-85); Administrative Warning, Form SP 1-104 (12-85); Consent to Obtain Medical Information, Form SP 1-105 (12-85); Consent to Obtain Financial Information, Form SP 1-106 (12-85); and Consent to Obtain Employment Records, Form SP 1-107 (12-85), will be distributed under separate cover. Troop Commanders/Bureau Directors shall ensure the forms are available for use on the date the provisions of this directive become effective. Additional supplies of the forms may be obtained through established requisition procedures.

3. Commanders/Directors shall ensure that all personnel under their command review and become familiar with the contents of this Directive. It shall be made a subject of weekly classes.

*Jay Cochran, Jr.*  
Jay Cochran, Jr.  
Commissioner

Distribution "B"  
plus All Personnel



PENNSYLVANIA STATE POLICE  
DEPARTMENT HEADQUARTERS  
1800 ELMERTON AVENUE  
HARRISBURG, PA. 17110

Enclosure (1)  
Special Order 85-198

SUBJECT: INTERNAL AFFAIRS DIVISION

.01 AUTHORITY

The Bureau of Professional Responsibility, Internal Affairs Division, is authorized by the Commissioner of the Pennsylvania State Police to recommend policies and procedures to initiate, conduct and/or control all necessary investigations, and to process all complaints or allegations of misconduct by Department personnel.

.02 PURPOSE

The purpose of this directive is to establish a prompt, thorough, factual and impartial means to investigate incidents and complaints involving Department personnel.

.03 GOALS

- A. Protection of the Public: The public has the right to expect efficient, fair and impartial law enforcement. Any misconduct by Department personnel must be detected, thoroughly investigated and properly adjudicated to assure these goals.
- B. Protection of the Department: The integrity of the Department depends on the personal integrity and self-discipline of all personnel. The Department must not be subjected to public scorn and censure because of misconduct by a few. When an informed public knows that the Department honestly and fairly investigates and adjudicates all allegations of misconduct against its personnel, confidence will be promoted and public support will be enhanced.
- C. Protection of Personnel: All personnel must be protected against false allegations of misconduct. Allegations will be thoroughly investigated to protect the integrity of all personnel.
- D. Discovery of Unsatisfactory Performance: Personnel who engage in acts of misconduct or have demonstrated that

they are unfit in the performance of their duties must be identified for the protection of the public, the Department and Department personnel.

#### .04 DEFINITIONS

- A. Administrative Action: Corrective action taken by command/supervisory personnel which may include the issuance of a Disciplinary Action Report.
- B. Administrative Investigation: Inquiries into alleged misconduct of Department personnel which are intended to lead to an objective finding, or any inquiry into the actions of Department personnel required by directives where no misconduct is alleged.
- C. Bureau Register: A compilation of data indexing the initiation and processing of administrative investigations by control number.
- D. Complainant: A person with knowledge of an alleged incident of misconduct, or violation of a statute or Department directive who brings the information to the attention of the Department.
- E. Complaint: Any oral or written receipt of information which by directive requires the initiation of an administrative investigation, or any allegation of misconduct, or violation of a statute or Department directive made against Department personnel.
- F. Control Number: A sequential number assigned by the Internal Affairs Division to index all complaints and administrative investigations.
- G. Misconduct: Any violation of the Pennsylvania State Police Code of Conduct or any other conduct which could reasonably be expected to destroy public respect and confidence in the Pennsylvania State Police.

#### .05 DUTIES AND RESPONSIBILITIES

- A. All Personnel: Personnel shall ensure that the confidentiality of all complaints is maintained.
- B. Director, Bureau of Professional Responsibility:
  - 1. Exercise administrative and command supervision over the Internal Affairs Division.
  - 2. Assign and coordinate all investigations of complaints against Department personnel. Depending on the nature of the incident, the investigation

may be conducted by a member of the Internal Affairs Division, or assigned to the Troop or Bureau of affected personnel, or assigned to a Commissioned Officer of the Director's choice for subsequent investigation.

3. Ensure that all investigations are conducted in a prompt, thorough and impartial manner.
4. Furnish an acknowledgement of receipt, in writing, to the complainant. Refer to Appendage B.
5. Furnish notification, in writing, to the affected Department personnel of a pending investigation, unless circumstances dictate otherwise. Refer to Appendage C. *INVEST RESP.*
6. Provide a monthly report summarizing the Division's activities to the Commissioner/designee.
7. Notify the affected Troop Commander/Bureau Director of the results of an investigation for subsequent notification of the affected Department personnel. *OMIT*

C. Troop Commanders/Bureau Directors:

1. Ensure compliance with the provisions of this Directive.
2. Supervise and coordinate all investigations of complaints against Department personnel conducted within their Troop/Bureau.
3. Assign a Commissioned Officer to those complaints which are to be investigated at the Troop/Bureau level. This will be in concurrence with the Director, Bureau of Professional Responsibility.
4. Assist members of the Internal Affairs Division in the investigation of complaints should any investigatory difficulties occur.
5. Notify affected Department personnel of the results of the investigation.
6. Ensure that in those cases where the investigation is conducted by Troop/Bureau personnel administrative action is initiated when warranted.
7. Initiate administrative action when warranted upon receipt of an investigation which was conducted by a member of the Internal Affairs Division.

D. Investigators:

1. Ensure that all investigations conducted are thorough and impartial, and that the constitutional rights specified in Garrity vs. New Jersey and Miranda vs. Arizona are protected, and that any provisions granted by contract are not violated. Refer to Appendages G & H.
2. Notify the Troop Commander/Bureau Director or the Director, Bureau of Professional Responsibility immediately whenever investigative difficulties occur.
3. Assist federal, state, county and municipal police agencies with investigations wherein Department personnel may be implicated in illegal activities or other acts of misconduct.
4. Assist the Office of Chief Counsel, upon request, in preparing cases when Department personnel are subjected to administrative action and/or criminal action, as well as gathering information for legal response when the Department or its personnel are named in a civil lawsuit.
5. Notify the complainant of the results of the investigation. *Include other parties involved*

E. Personnel Receiving Complaints:

1. Receive complaints against Department personnel courteously, regardless of the circumstances under which they are received.
2. Process all complaints in accordance with the provisions of this directive.

F. Personnel Who are the Subject of an Administrative Investigation:

1. Personnel may at any time during the course of an internal investigation be ordered, in writing, by the Commissioner/Troop Commander/Bureau Director or their designee to submit to any or all of the following in accordance with FR 1-1 and/or FR 1-2.:
  - a. Breath Test.
  - b. Urine Test.
  - c. Blood Test.

- d. Polygraph Test.
  - e. Lineup.
  - f. Correspondence, Form STD-501, related to the alleged misconduct or performance of duty.
  - g. Medical/psychological/psychiatric examination.
  - h. Any other non-testimonial evidence test.
  - i. Questioning related to alleged misconduct or performance of duty.
2. Personnel shall be advised, however, that none of the results or information can be used against them in a criminal prosecution. Refer to Administrative Warning, Appendage G.
- G. Personnel Who are the Subject of a Criminal Investigation: When interviewed during the course of an investigation, personnel shall if applicable, be afforded the constitutional protections which are guaranteed as a result of U.S. Supreme Court decisions in *Miranda vs. Arizona* and *Garrity vs. New Jersey*. Refer to Appendage H.

.06 INVESTIGATIVE ASSIGNMENT CRITERIA

- A. The Internal Affairs Division may, at the discretion of the Director, Bureau of Professional Responsibility, retain primary investigative responsibility for personnel inquiries under the following circumstances:
- 1. Shooting incidents and physical force incidents as defined in directives, regardless of personnel duty status.
  - 2. Any allegation of criminal conduct directed at Department personnel.
  - 3. Any case of alleged misconduct by Department personnel.
  - 4. Allegations of violation of FR 1-1.34, AR 4-6.03 A 6, and other allegations of discrimination, harassment or violation of civil rights.
  - 5. Requests for assistance by personnel who are victims of personal harassment, false accusations, or contrived situations intended to harm.

6. Special requests for investigation initiated by the Commissioner.
- B. The following criteria will be considered by the Director, Bureau of Professional Responsibility in determining if the Internal Affairs Division will assume investigative responsibility or if the investigation will be assigned to Troop/Bureau personnel:
1. Seriousness or complexity of the allegation to be investigated.
  2. Source of the complaint.
  3. Number of personnel involved.
  4. Assignment of personnel implicated in the allegation.
  5. Geographical limitations.
  6. Need for internal security relative to all or part of the investigation.
  7. Any exceptional circumstance noted by or brought to the attention of the Director, Bureau of Professional Responsibility.
- C. While the Internal Affairs Division is concerned with all instances of misconduct, it will not assume investigative responsibility for mere performance inadequacies or procedural discrepancy violations unless they are indicative of a more serious underlying problem. Monitoring of these latter types of violations will occur to identify trends.
- D. If, in the course of monitoring an ongoing investigation, the Director, Bureau of Professional Responsibility determines that investigatory difficulties exist, the Internal Affairs Division may be directed to assume full or partial responsibility for conducting that specific investigation. This may occur at any stage of investigation including post-completion. Even when the investigation is being handled by Troop/Bureau personnel, the Director may direct that specific investigative procedures be undertaken if it is determined to be necessary, prudent or desirable.

.07 COMPLAINT PROCESSING

- A. Types of Complaints: Complaints may be received in any of the following manners and shall be processed in accordance with this directive in all instances:

1. Telephone - Self-explanatory.
  2. In-Person - Individuals may appear at a Department installation, or may make a complaint to personnel at any location.
  3. Correspondence - Self-explanatory.
- B. Receiving Complaints:
1. Every complaint, whether anonymous, verbal or written, received by personnel at the Troop/Bureau level shall be recorded on the Complaint Reception and Processing Worksheet, Form SP 1-101, and processed as described in Appendage A. When the complaint involves personnel in the chain of command and the process described in Appendage A is inappropriate, contact may be made directly with the Internal Affairs Division.
  2. Complainants shall not be required to appear at a Department location or submit correspondence to initiate a complaint.
  3. Complainants may remain anonymous regardless of the type of complaint. However, personnel receiving the complaint shall attempt to discover the identity of the complainant if possible.
  4. Complainants shall be advised that a Department representative will contact them if their identity is known.
  5. The following procedure shall be followed by personnel receiving a complaint during a weekend, holiday or after hours:
    - a. In those cases which are not of a serious nature and do not require an immediate response from an Internal Affairs Division investigator, the information shall be documented and processed in accordance with Appendage A during normal working hours.
    - b. In cases of a serious nature that would logically dictate a swift response on behalf of an Internal Affairs Division investigator, personnel receiving the complaint shall immediately notify the supervisor who in turn shall notify the Troop Officer of the Day who will then notify the Officer of the Day at Department Headquarters. The Officer of the Day at Department Headquarters shall contact the appropriate Bureau of Professional

Responsibility duty member to evaluate the necessity of an immediate response into the investigation; e.g., use of excessive force, shooting incidents, civil rights violations, serious breaches of conduct by Department personnel that ultimately would be investigated by the Internal Affairs Division, and incidents that are likely to generate more than routine public interest.

C. Notifying Involved Individuals: The following individuals shall be notified by the Director, Bureau of Professional Responsibility:

1. The complainant shall be notified that the complaint has been received. Refer to Appendage B.
2. The individual(s) involved in the complaint shall be notified unless circumstances dictate otherwise. Refer to Appendage C.

D. Investigation Procedures: The following procedures shall be followed by individuals conducting Department personnel investigations:

1. An Incident Memo, Form SP 7-001, shall be prepared.
2. The General Investigation Report, Form SP 7-0025, shall be used to report all Department personnel investigations.


NOTE: In those instances where a violation of a statute is alleged, an Initial Crime Report, Form SP 7-004, or a Non-Traffic Citation, Form SP 7-0017B, as appropriate, shall also be prepared.

3. Make a personal contact when practical with complainants, witnesses and personnel who are involved. Anonymous complaints shall not be automatically dismissed. A thorough investigation shall be conducted to independently prove or disprove the allegation. No action shall be taken against any Department personnel solely on the basis of an anonymous complaint. Sincere attempts shall be made to discover the identity of such complainant. The investigations shall take place because they may reveal the only clue to the discovery of problems impacting the Department's integrity and operation.
4. Take oral or written statements as to the alleged misconduct by Department personnel.

NOTE: Tape recorded statements may be taken, if appropriate, with the consent of the party involved.

5. Collect all documents and/or reports or copies thereof, if originals are not available, which have been generated concerning the incident being investigated.
6. Employ all available investigative tools to secure evidence to assist in determining the facts of an investigation. All evidence collected shall be processed in accordance with the procedures outlined in Operations Manual 7-7. Examples of investigative tools and evidence to be used in the investigation are as follows:

a. Documents and Records

- (1) Medical Reports - Refer to Appendage D.
- (2) Licenses, Registrations or any Applications.
- (3) Telephone toll records.
- (4) Financial Records - Refer to Appendage E.
- (5) Credit Bureau Checks.
- (6) Search Warrants/Affidavits.
- (7) Employment Records - Refer to Appendage F.
- (8) Subpoenas.
-  (9) Statements/Interviews - NOTE: All statements/interviews obtained shall be recorded on separate sheets of paper and attached to the investigative report along with the appropriate Warning Form, Appendage G or H.

b. Clothing

- (1) Victims - e.g., shootings, brutality, etc.
- (2) Department Personnel - Collection of clothing for purposes of exoneration, if warranted.

- c. Photographs
  - (1) Victims - Brutality, shootings, etc.
  - (2) Scenes - Location of alleged violation.
  - (3) Photo Lineups - Refer to U.S. vs. Wade, covering the Supreme Court guidelines associated with Lineups. Refer to Appendage J.
- d. Radio Tapes (Self-explanatory).
- e. Sketches - Prepared of scene, if warranted.
- f. Weapons - ascertain if:
  - (1) Issued/personal.
  - (2) Ammunition - issued/personal.
  - (3) Alterations
  - (4) Make, Model, Serial Number, Caliber.
- g. Technical Aids
  - (1) Laboratory - chemistry, comparisons, etc.
  - (2) Ballistics.
  - (3) Polygraph.
  - (4) Helicopter.
  - (5) Scuba Team.
- 7. Ensure that the personal property of Department personnel is not subjected to search and seizure without probable cause and a search warrant as required by law. However, Department property may be searched at any time, even if assigned to or used exclusively by a single officer. This search will be conducted by any authorized person pursuant to an investigation.
- 8. Accurately report the facts of any action which violates Department directives and/or actions which also involve violations of statutes. At no time will recommendations be suggested or offered as to the appropriate administrative action to be taken. This does not preclude listing Department directives violated.

*clarify*

9. Strictly adhere to all Department directives, the Pennsylvania Rules of Criminal Procedure and statutes while conducting an investigation of any Department personnel.
10. Ensure that all individuals under investigation are advised of their Constitutional Rights which may apply during the investigation. Refer to Appendages G and H.
11. Terminate the investigation when it is determined that the complaint is unfounded or that the individual is clearly exonerated.
- \* 12. Ensure that the investigation is completed and all reports are received within 30 days after assignment unless another time period is specified by the Director, Bureau of Professional Responsibility.

E. Submission of Internal Investigation Reports:

- \* 1. Investigations completed by Troop/Bureau personnel shall be forwarded to the appropriate Troop Commander/Bureau Director.
  - a. Upon completion of an investigation which warrants administrative action, the Troop Commander/Bureau Director shall process the report(s) in accordance with FR 3-3.
  - b. Upon completion of an investigation which does not require administrative action, the Troop Commander/Bureau Director shall endorse and forward the investigative report(s) with the attached worksheet through the Area Commander to the Director, Bureau of Professional Responsibility.
2. Investigations completed by Bureau of Professional Responsibility personnel shall be forwarded to the Director, Bureau of Professional Responsibility.
  - a. Upon completion of an investigation which warrants administrative action the Director, Bureau of Professional Responsibility shall endorse the investigative report(s) and forward it to the Deputy Commissioner for review. The report(s) shall then be returned through the Area Commander to the appropriate Troop Commander/Bureau Director for administrative action, in accordance with FR 3-3.

- b. Upon completion of an investigation which does not warrant administrative action, the Director, Bureau of Professional Responsibility shall endorse the investigative report(s) and forward it to the Deputy Commissioner for review.
3. The central location for the collection and maintenance of all administrative investigation information shall be the Bureau of Professional Responsibility, Internal Affairs Division. All personnel investigations are of a confidential nature and may be reviewed only upon authorization of the Commissioner/designee.

.08 INTERNAL AFFAIRS DIVISION PERSONNEL

- A. Selection: Staffing an Internal Affairs Division is an important factor in the success or failure of the Division. The below listed factors will be considered in the selection process:
  1. Members assigned to the Internal Affairs Division shall be volunteers.
  2. Members shall have demonstrated that they possess a high degree of investigative skills and the ability to write clear, concise and complete investigative reports.
  3. Members shall have an excellent reputation, among both their peers and supervisors, in terms of integrity and overall performance as members.
  4. Members shall be familiar with those statutes, and Department directives, policies and procedures which are related to internal investigations.
  5. Members should have a thorough knowledge in the collection and preservation of evidence.
  6. Members should have knowledge of records maintained by other sources and agencies, and their availability.
  7. Members should possess the ability to perform photographic surveillance and possess or be willing to acquire the proper certification required to perform electronic surveillance.
  8. Members should be in good physical condition and present a neat appearance.

9. Members should be able to interact effectively with people and be proficient in interviewing and interrogation techniques.
- B. Tenure: It is a generally accepted practice to periodically rotate members assigned to an Internal Affairs Division. The assignment of an investigator to this Unit should be for a period of approximately 3 years. This time limitation may be altered for good cause at the discretion of the Commissioner. This rotation process will assure the infusion of new personnel and new ideas, foster a career development process, and allow greater member participation. These factors should create a greater understanding and respect for the internal affairs investigation process and thereby lessen the alienation of investigators from peers and supervisors.

## APPENDAGE A

COMPLAINT RECEPTION AND PROCESSING WORKSHEET  
FORM SP 1-101

- A. PURPOSE: This form is used to provide a uniform method of receiving and recording complaints against Department personnel.
- B. PREPARATION: This form shall be printed with ball-point pen or typewritten in original only by the individual receiving the complaint.
- C. BLOCK INSTRUCTIONS: Self-explanatory.
- D. DISTRIBUTION WHEN A COMPLAINT IS RECEIVED AT A TROOP/BUREAU LOCATION:
1. Personnel Receiving Complaint - Forward thru channels to the Troop Commander/Bureau Director by the most expedient means possible. If the complaint involves an individual in the chain of command, the individual may be bypassed when submitting the Worksheet thru channels.
  2. Troop Commander/Bureau Director - The Troop Commander/Bureau Director, after reviewing the Worksheet, shall determine if an investigation is warranted.
    - a. If the Troop Commander/Bureau Director determines that an investigation is not warranted, the Troop Commander/Bureau Director shall immediately forward the Worksheet, through channels, to the Director, Bureau of Professional Responsibility. An endorsement shall be attached to the Worksheet citing reasons for his decision. At this time a control number will be assigned and recorded in the Bureau Register.
    - b. If the Troop Commander/Bureau Director determines that an investigation is warranted, the Director, Bureau of Professional Responsibility or his designee shall be contacted by telephone for concurrence and to determine assignment of the investigation. At this time a control number will be assigned and recorded in the Bureau Register.
  - (1) If the decision is made for the investigation to be conducted by Troop/Bureau members, the Worksheet shall be forwarded to the investigating officer for inclusion as an attachment to the General Investigation Report.

- (2) If the decision is made for the investigation to be conducted by a member of the Internal Affairs Division, the Worksheet shall be immediately forwarded to the Director, Bureau of Professional Responsibility. It will then be forwarded to the Internal Affairs Division investigator for attachment to the General Investigation Report.

E. DISTRIBUTION WHEN A COMPLAINT IS RECEIVED BY THE BUREAU OF PROFESSIONAL RESPONSIBILITY:

1. When it is determined that an investigation is not warranted, a Worksheet shall be prepared and filed.
2. When it is determined that an investigation shall be conducted by a member of the Internal Affairs Division, the Worksheet shall be prepared and forwarded to the assigned Internal Affairs Division investigator for attachment to the General Investigation Report.
3. When it is determined that the investigation is to be conducted by Troop/Bureau members, the Worksheet shall be prepared and forwarded to the Troop Commander/Bureau Director of the affected personnel. The assigned investigator shall attach it to the General Investigation Report.

## COMPLAINT RECEPTION AND PROCESSING WORKSHEET

1. Complainant's name: \_\_\_\_\_
2. Complainant's address: \_\_\_\_\_  
\_\_\_\_\_
3. Complainant's phone number: (      ) \_\_\_\_\_
4. Complainant's place of employment and phone number: \_\_\_\_\_  
\_\_\_\_\_ (      ) \_\_\_\_\_
5. Type of allegation: \_\_\_\_\_
- ☐ Physical Force
- ☐ Shooting Incident
- ☐ Physical Abuse
- ☐ Verbal Abuse
- ☐ Criminal Conduct
- ☐ Improper Conduct on duty
- ☐ Improper Conduct off duty
- ☐ Dissatisfaction with performance of duty
- ☐ Other \_\_\_\_\_
6. Synopsis of allegation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Location of incident: \_\_\_\_\_  
\_\_\_\_\_
8. Date and time occurred: \_\_\_\_\_ Day \_\_\_\_\_
9. Date/day and time complaint received: \_\_\_\_\_
10. Bureau/Troop-Division/Station & location code receiving the complaint: \_\_\_\_\_  
\_\_\_\_\_
11. Personnel receiving complaint-name/SS#: \_\_\_\_\_
12. Subject named in complaint: \_\_\_\_\_
13. Subject's rank/position: \_\_\_\_\_ SS# \_\_\_\_\_
14. Bureau/Troop-Division/Station & location code/type of assignment: \_\_\_\_\_  
\_\_\_\_\_
15. BPR member contacted/time: \_\_\_\_\_ / \_\_\_\_\_
16. BPR control number-#: \_\_\_\_\_

SP 1-100 (12-85)



APPENDAGE B  
PENNSYLVANIA STATE POLICE  
DEPARTMENT HEADQUARTERS  
1800 ELMERTON AVENUE  
HARRISBURG, PA. 17110

Dear

This will acknowledge receipt of the complaint which you filed with this agency.

You will be contacted by a Department representative in the near future. Any questions you may have concerning your complaint should be directed to the Bureau of Professional Responsibility at (717) 783-5145.

Very truly yours,

John K. Schafer, Captain  
Director  
Bureau of Professional Responsibility

Enclosure (1)  
Special Order 85-198

NOTIFICATION OF COMPLAINT

T0: \_\_\_\_\_  
(Rank) (Name) (Station)

A complaint has been received concerning an incident in which you were alleged to have been involved. The details of the complaint are as follows:

You will be apprised of other issues which may arise from the investigation of this complaint.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Signature) (Badge #)

                     (Date)                                           (Time)

(Social Security #)

(Prepare in two copies)

\*\* One copy to be kept with case file

\*\* One copy to be given to subject of investigation

APPENDAGE D

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA STATE POLICE

CONSENT TO OBTAIN MEDICAL INFORMATION

I, \_\_\_\_\_, do hereby, voluntarily and without promises or threats of any kind, give permission to \_\_\_\_\_ of the Pennsylvania State Police to obtain information from all medical authorities, hospitals, clinics, or physicians who possess any and all records concerning my medical examinations, treatments, and/or hospital/clinic admissions relative to the examination and/or treatment of \_\_\_\_\_.

I understand that the information obtained is to be used for administrative purposes only and will not be used against me in any criminal proceeding.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/Town)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Time)

APPENDAGE E

Enclosure (1)  
Special Order 85-198

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA STATE POLICE

CONSENT TO OBTAIN FINANCIAL INFORMATION

I, \_\_\_\_\_ do hereby, voluntarily and without promises or threats of any kind, give permission to \_\_\_\_\_ of the Pennsylvania State Police to obtain and examine my financial records held by any financial institution that possess such records.

I also understand that the information obtained is to be used for internal, administrative purposes only and may not be used as evidence against me in any criminal proceeding.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(City/Town)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Time)

APPENDAGE F

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA STATE POLICE

CONSENT TO OBTAIN EMPLOYMENT RECORDS

I, \_\_\_\_\_ do hereby, voluntarily and without promises or threats of any kind, give permission to \_\_\_\_\_ of the Pennsylvania State Police to obtain and examine all records held by my previous employer(s) concerning my employment history and job performance.

I understand that the information obtained is to be used for internal, administrative purposes only and will not be used against me in any criminal proceeding.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/Town)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Time)

APPENDAGE G

Enclosure (1)  
Special Order 85-198

COMMONWEALTH OF PENNSYLVANIA

ADMINISTRATIVE WARNING

Member/Employe \_\_\_\_\_

Interviewer \_\_\_\_\_

Case Control No. \_\_\_\_\_ Date: \_\_\_\_\_

Time Started \_\_\_\_\_ Time Ended: \_\_\_\_\_

At this time I am going to question you about the following allegation:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This questioning concerns administrative matters relating to the official business of the Pennsylvania State Police. I am not questioning you for the purpose of instituting a criminal prosecution against you, or for the purpose of securing additional evidence against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates you may be guilty of criminal conduct concerning this allegation, neither your self-incriminating statement nor its fruits will be used against you in a criminal proceeding.

Since this is an administrative matter within the Pennsylvania State Police, you are required to answer my questions fully and truthfully or you will be subjected to administrative action.

Do you understand what I have just explained to you? \_\_\_\_\_ YES \_\_\_\_\_ NO

Do you have any questions concerning what I have just explained to you? \_\_\_\_\_ YES \_\_\_\_\_ NO

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Signature \_\_\_\_\_  
Employee/Member

SP 1-103 (12-85)

## APPENDAGE H

## PENNSYLVANIA STATE POLICE PERSONNEL

## RIGHTS WARNING AND WAIVER

TIME \_\_\_\_\_

DATE \_\_\_\_\_

PLACE \_\_\_\_\_

My name is \_\_\_\_\_ of the Pennsylvania State Police. You have an absolute right to remain silent and anything you say can and will be used against you in a court of law. You also have the right to talk to an attorney before and have an attorney present with you during questioning. If you cannot afford to hire an attorney, one will be appointed to represent you without charge before any questioning, if you so desire. If you do decide to answer questions, you may stop any time you wish and you cannot be forced to continue. If you do exercise your right to remain silent, your refusal to answer will not be grounds for administrative action.

## WAIVER

I fully understand the statement warning me of my rights and I am willing to answer questions. I do not want an attorney and I understand that I may stop answering questions anytime during the questioning. No promises have been made to me, nor have I been threatened in any manner. I also understand that my refusal to answer questions will not be grounds for administrative action.

\_\_\_\_\_  
Signature

WITNESS:

S/ \_\_\_\_\_

S/ \_\_\_\_\_

## APPENDAGE I

Garrity v. New Jersey, 87 S.Ct. 616, 385 U.S. 493, 17 L.Ed.2d 562 (1967)

This case involved a situation where police officers who were being criminally investigated were given a choice to either incriminate themselves or forfeit their jobs under a state (New Jersey) statute dealing with forfeiture of office, tenure and pension rights by public employees who refuse to testify on grounds of self-incrimination. The officers chose to make confessions. However, the Supreme Court of the United States held the confessions were not voluntary, but were coerced. The court said that the option to lose their means of livelihood or to pay the penalty of self-incrimination is in direct contrast of free choice to speak out or to remain silent. That practice, the court said, is likely to exert such pressure upon an individual as to disable him from making a free and rationale choice. The protection of an individual under the Fourteenth Amendment against coerced statements prohibits the use of these statements, obtained under threat of removal from office, in subsequent criminal proceedings.

In summary, Garrity held that public employee statements that are induced by threat of dismissal or other discipline may not be used in a subsequent criminal prosecution.

## APPENDAGE J

U.S. v. Wade, 87 S.Ct. 1926, 388 U.S. 218, 18 L.Ed. 2d 1149 (1967)

The question addressed in this case was whether courtroom identifications of an accused at trial is to be excluded from evidence because the accused was exhibited to the witnesses before trial at a post-indictment lineup conducted for identification purposes without notice to and in the absence of the accused's appointed counsel. The Supreme Court of the United States held that compelling the accused merely to exhibit his person for observation by a prosecution witness prior to trial involves no compulsion of the accused to give evidence, and was no violation of Wade's privilege against self-incrimination. However, the courtroom identification should have been excluded because the lineup was conducted without notice to and in the absence of counsel. The principle followed in that an addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial. The security of that right is as much the aim of the right to counsel as it is of the other guarantees of the Sixth Amendment.

In summary, Wade held that pre-trial lineups constitute a critical step in the prosecutive process such that every individual has a right to counsel at such proceedings.

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5. Bureau/Office Director whenever the requested transfer is between Divisions/Sections of that Bureau/Office.
6. Deputy Commissioner of Staff, Administration, and/or Operations, whenever the transfer is from an organizational segment under one's authority to a segment under the other's authority. In such cases, the sending authority shall make a recommendation and the receiving authority shall make the final decision.

F. Monthly Report: Troop Commanders and Bureau/Office Directors shall submit a monthly supplemental investigation, through channels, under confidential cover, to the approving authority, concerning every member assigned from another Troop, Bureau, or Office. The supplemental investigation shall indicate the status of the individual concerned in regards to the emergency or hardship, and a recommendation to continue/discontinue the emergency or hardship transfer. A copy shall be provided to the involved member's assigned Troop, Bureau, or Office.

2.05

#### GENERAL TRANSFERS

A. Applicability: Any member may be transferred anywhere within the Department whenever it is determined that such transfer(s) is necessary to:

1. Fulfill the requirement(s) for additional services.
2. Fulfill the need(s) for specific or specialized skills.
3. Accomplish any other need(s) of the Department.

B. Procedures: All general transfers require one of the following approvals, dependent upon the nature of the transfer:

1. Intratrop: General transfers within Troops may be made at the discretion of the Troop Commander, consistent with the provisions of existing labor agreements in effect and with the approval of the Area Commander. The exception is for newly graduated Troopers during their Coach-Trainee period, in which case no such approval is required.

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- a. A draft of all proposed general transfers shall be submitted, under confidential cover, to the Area Commander at least 15 days prior to the proposed effective date. The 15-day requirement may be waived by the Area Commander when the transfer is to fill a vacancy which is a result of a promotion, intertroop transfer, or separation. The draft shall be in triplicate, indicating the reason(s) for the transfer(s) and the likelihood of incurring moving expenses. The Area Commander shall, within five days of receipt of the proposed transfers, approve/disapprove the proposal as authorized and return same to the Troop Commander.
  - b. Upon receipt of an approved general transfer, the Troop Commander shall submit, to the Director, Bureau of Personnel, the required number of copies needed for inclusion in the member's official personnel folder.
2. Intertroop: General transfers between Troops shall be made by the Commissioner. The Director, Bureau of Personnel, shall submit, as the needs of the Department require, a draft of proposed intertroop transfers to the Commissioner for approval. The Commissioner, after evaluating the proposal, shall make whatever order deemed necessary and forward the action to the Director, Bureau of Personnel, for implementation.
  3. Administrative: General transfers between organizational segments within a Bureau/Office may be made at the discretion of the Bureau/Office Director, except that transfers between training installations within the Bureau of Training and Education; laboratory facilities within the Bureau of Forensic Services; Aviation Patrol Units within the Bureau of Emergency and Special Operations; or the District Enforcement Offices within the Bureau of Liquor Control Enforcement; require the approval of the Commissioner. Transfers between Bureaus/Offices, Area Commands or an Area Command and a Bureau/Office, require approval of the Commissioner. The following procedure shall be followed:

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- a. Transfers directed by a Bureau/Office Director shall be reported to the Director, Bureau of Personnel, on a Bureau/Office Personnel Order.
  - b. The Director, Bureau of Personnel, shall submit, as the needs of the Department require, a draft of other proposed administrative transfers to the Commissioner for approval. The Commissioner, after evaluating the proposal, shall make whatever order necessary and forward action to the Director, Bureau of Personnel, for implementation.

## 2.06

## TEMPORARY INTRATROOP TRANSFERS

- A. Applicability: A temporary intratroup transfer may be made to fulfill a special need of the Department. Verbal approval for such transfers may be obtained in extreme cases; however, written justification shall be furnished, through channels, to the Area Commander for approval as soon as possible.
  1. Temporary transfers shall not exceed 30 days unless a longer period is authorized by the Area Commander. Requests for an extension of an additional 30-day period must include justification, and shall be approved by the Area Commander prior to the beginning of any extension.
  2. All temporary transfers shall be covered by a Troop Personnel Order and shall be specifically identified as temporary.
- B. Coach-Trainee Period: Newly graduated Troopers may be assigned to another Station prior to assignment to their allotted Station as part of their training and familiarization of the Troop area; however, Troop Commanders shall endeavor to allow newly graduated Troopers to receive their Coach-Trainee training at their regularly assigned Station.
  1. Troop Commanders shall advise all newly graduated Troopers of their proposed assigned Station at least ten days prior to the effective date of the assignment.
  2. Changes of assignment during this training period may be made by the Troop Commander without prior approval.

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1.27

## PAYMENT OF DEBTS

- A. Members shall promptly pay their just debts. They shall not assign their salary or contract for any debts or liabilities which they are unable or unwilling to pay. They must discharge honorably and promptly all claims or judgments and satisfy all executions which may be held against them within a reasonable amount of time.
- B. Members who file bankruptcy petitions or receive notice that a financial judgment and/or creditor claim has been filed against them shall submit correspondence, through channels, to their Commander, or Director. The correspondence shall set forth the circumstances of the bankruptcy petition, or an accounting of how the judgment/claim will be satisfied or the grounds for contesting the judgment/claim. The Commander or Director shall forward the correspondence, through channels, to the Director, Bureau of Personnel. After appropriate review, the correspondence shall be filed in the member's official personnel folder.

1.28

## INTERNAL INVESTIGATIONS

Whenever there is public criticism of the Department or when complaints are received in connection with any police action; investigation or inquiry indicating misconduct of personnel; harassment or intimidation of subjects, individuals, or groups; or dereliction of any nature by the Department or members of the Department; all members engaged in such police action; investigation; hearing or other inquiry; shall prepare written statements, at once, setting forth the facts in order that a record will be available for future reference. Due to the internal administrative nature of such police action, investigation, hearing or other inquiry, all members are required to truthfully and completely answer all questions relating thereto. Procedures in cases that will result in criminal prosecution will include those rights accorded to all citizens of the Commonwealth.

1.29

## CARRYING OF WEAPONS AND AMMUNITION

- A. Members/[REDACTED], while on duty and in uniform, shall carry the issued [REDACTED] and ammunition. Members/[REDACTED] may also carry one authorized personal handgun and ammunition. The personal handgun and

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- B. Vote as they choose.
- C. Express their opinion on any political subject or candidate, privately.
- D. Maintain political neutrality.
- E. Attend political meetings as private citizens.

## 1.14 USE OF OUTSIDE INFLUENCE

Members shall not knowingly use, attempt to use, or permit the use of any outside influence to gain promotion, transfer, or change of duty for themselves or other members.

## 1.15

## HONORING OFFICE INQUIRY ESTABLISHMENT

Members shall not knowingly use, attempt to use, or permit the use of any outside influence to gain promotion, transfer, or change of duty for themselves or other members.

## 1.16

## REQUIRED RESIDENCY

Members shall reside within the limits of the Commonwealth and shall maintain a telephone in such residence. Any change of address or telephone number shall be reported in accordance with AR 4-2.

## 1.17

## REPORTING OF INFORMATION

- A. Members shall report to their supervisor all information that comes to their attention concerning organized crime, racketeering, vice conditions or violations of any laws concerning such activities.
- B. Members shall promptly report to their supervisor any information which comes to their attention and which tends to indicate that any other member or employee has violated any law, rule, regulation or order.